

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Timothy Gilmore  
1512 North 39<sup>th</sup> Street  
Seattle, WA 98103

**File No:** PL07-0898

**Request:** Shoreline Variance

**Location:** 32749 South Shore Drive on the shores of Lake Cavanaugh, within the SE1/4 Sec. 21, T33N, R6E, W.M.

**Parcel No:** P66843

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To repair and slightly expand a non-conforming shoreline residence. The structure is non-conforming because it is set back only 18 feet from the Ordinary High Water (OHWM) The project will include replacing the roof of the existing structure and extending roof coverage to the northeast and southeast. The improvements will expand the livable space on the second story by about 160 square feet and raise the height of the structure by four (4) feet. The project will not expand the building foot print, alter the developed area of the site, nor extend the height of the structure beyond the 30 feet allowed.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on April 9, 2008.

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

## **FINDINGS OF FACT**

1. Timothy Gilmore (applicant) seeks to repair and improve a residence on the shores of Lake Cavanaugh. The project will slightly (by 160 square feet) expand the livable space on the second story of the house.

2. The site is located on at 32749 South Shore Drive within the SE1/4 Sec, 21, T33N, R6E, W.M. The parcel number is P66843. The shoreline designation is Rural Residential.

3. The existing home was built in 1952. It is a legal nonconforming structure as to shore setback. The setback standard is 50 feet. The existing home is 18 feet from the Ordinary High Water Mark (OHWM).

4. Under the local Shoreline Master Program (SMP), non-conforming structures on shorelines may be continued provided they are not “enlarged, or increased or extended to occupy a greater area.” SMP 12.02(1). However, there is an exception to this rule (SMP 12.04):

If the Hearing Examiner . . . determines that the enlargement, extension or increase of the non-conforming . . . structures on shorelines can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment and purpose of this Program and the Act, and that to deny the enlargement, extension or increase in the non-conformity would constitute a hardship greater than the public benefit derive from denial of the non-conformity, such proposals shall be permitted subject to terms and conditions established by the Hearing Examiner . . . and attached to the variance . . . permit required of the applicant.

5. The proposal is to replace the roof over the dormer (second story). The roof currently consists of a compilation of fiberglass covering over the decks and walkways, and standard asphalt shingles over the remainder of the roof. The plan is to remove the fiberglass roofing and replace the entire covered area, including decks and walkways, with a pitched roof of standard asphalt shingle material. This will result in extending the shingled roof to the northeast and southeast increasing the size of the dormer and raising the height of the structure by four feet.

6. The second story now consists of a bedroom, great room, bathroom and storage rooms totaling about 1,190 square feet. The proposal will include the same features plus covering the deck and breezeway stairs. The square footage of the second story will become approximately 1,350 square feet. The project will not increase the

building footprint, encroach closer to the shore, alter the developed area of the site (28%), nor extend the height of the structure beyond the 30-foot limit. No perceptible additional roof runoff is anticipated.

7. The present flat fiberglass roof is not structurally sound. Moreover, it leaks. Several attempts to seal the many leaks have not been successful. Consequently, the decking below has developed leaks and dry rot has infested the supporting structures and framing. The leaks have also caused mold growth in wallboard in the basement – a potential health hazard. The decking, supports, and breezeway must be repaired and a dependable waterproof roof is needed.

8. The subject site is accessed off of South Shore Drive by a gravel driveway leading to a parking area which is more than 50 feet from the OWHM. The site gently slopes downhill from the road to the lakeshore. The entire site is landscaped with lawn and native plant species. None of these features will be changed by the project.

9. The project will have no additional adverse impacts on the Fish and Wildlife Habitat Conservation area abutting the lake. Views will not be adversely affected. The remodeled house will look similar to neighboring houses. No increased demands on existing water and sewer facilities will be made.

10. The surrounding land is a developed shorefront with single family residences and recreational cabins. Nearby homes are also closer to the shore than the regulatory shore setback. The roofing and repair project will improve the appearance of the subject residence. There is no opposition. One neighbor wrote two letters in support of the proposal.

11. The criteria for approval of Shoreline Variances for development landward of the OHWM are set forth at SMP 10.03(1), as follows:

a. That 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 the master program.

b. 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.

c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

d. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief.

e. 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.

12. The Staff Report analyzes the application in relation to the above criteria and determines 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.

13. The increase in the non-conforming structure is merely an increase in permanently covered floor space on the second floor above the existing ground floor footprint. The Examiner finds that this minor expansion will occur without appreciable threat to the health, safety and general welfare of the public, the shoreline environment, or the purpose of the Master Program and Shoreline Management Act.

14. The project is needed and will be an improvement. To deny it would constitute a hardship greater than any public benefit derived from denial.

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 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 comply with all applicable state and local regulations, including but not limited to, Chapters 173-201A and 173-200 WAC (surface and ground water quality), Chapter 173-60 WAC (maximum environmental noise levels), Chapter 14.32 SCC (drainage), Chapter 14.24 SCC (critical areas), and Northwest Clean Air Agency requirements.

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

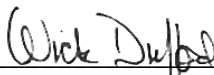
6. The project shall commence within two years of the date of final approval and be completed within five years thereof or the variance shall become void.

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

### **DECISION**

The requested Shoreline Variance (PL07-0898) is approved, subject to the conditions set forth above.

DONE this 17, day of April, 2008.

  
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Wick Dufford, Hearing Examiner

Date Transmitted to Applicant: April 17, 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.