

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Bart and Kori Robison
15412 14th Drive SE
Mill Creek, WA 90812

Agent: Jackie Chriest
33688 Bamboo Lane
Mount Vernon, WA 98274

File Nos: PL08-0179 (shorelines)
PL08-0231 (zoning)

Requests: Shoreline Variance (shore setback, lot coverage)
Administrative Decision (road setback)

Location: 35072 North Shore Drive on the shore of Lake
Cavanaugh, within a portion of Sec. 25, T33N,
R6E, W.M.

Parcel Nos: P66468, P66445

Shoreline Designation: Rural Residential

Summary of Proposal: To replace an existing cabin with a new cabin, deck and
garage to be located about 25 feet landward of the Ordinary
High Water Mark (OHWM). The site coverage of the
developed area will be about 37%. The front setback from
North Shore Drive will about 13.75 feet.

Public Hearing: After reviewing the Report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on January 7, 2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Bart and Kori Robison (applicants) seek to remove an existing cabin, deck and shed and replace them with a new residence, deck and garage. The locale is on the shore of Lake Cavanaugh. The developed area will be larger than the old one, but the structures will not be located closer to the Ordinary High Water Mark (OHWM)>

2. The site is located at 35072 North Shore Drive, within a portion of Sec. 25, T33N, R6E, W.M. The parcel numbers are P66468 ad P66445. The shoreline designation is Rural Residential.

3. The ownership, like many in the area, consists of a front and a back lot. The front lot is on the lake. The back lot is on the landward side of North Shore Drive. The front lot is only 60 feet wide and 96 to 150 feet deep from the OHWM to the property corners on the road. The back lot is similar in width, but deeper. The topography is a downward slope from the upland boundary to the lake shore.

4. The proposal is to build a 1,588 square foot residence, a 624 square foot garage, and a 454 square foot deck. The residence will include two stories, with a daylighted lower floor. The set back from the OWHM will be 25 feet. The total developed lot coverage will be 37%.

5. The property is served by a driveway from North Shore Drive. There will be no need for parking in the public right-of-way.

6. There is an existing roadside berm that was created with the construction of North Shore Drive. The applicants propose to lower this berm to the native height of five feet, removing about 240 cubic yards of earth. The reduced height should improve visibility along the road.

7. The building site (Lot 22, Block 6, Lake Cavanaugh Subdivision 1), was subdivided before the adoption of shoreline management regulations and follows the area-wide pattern of small, narrow lots between the lake and the road. Subtracting the standard setbacks from the shore and from the road leaves only 1,019 square feet of building space. The diagonal setback from the road creates a triangular building area that further constricts construction options.

8. The entire front lot is within shorelines jurisdiction. The Shorelines Master Program (SMP) shore setback for the Rural Residential designation is 50 feet. The standard SMP site coverage limit is 30%. The Zoning Code front (road) setback is 35 feet. The applicants seek variances to reduce the shore setback to 25 feet, and to allow 37% lot coverage. They also seek to reduce the Zoning Code front setback to 13.75 feet.

9. The site is in a heavily developed waterfront area. For adjacent homes within 300 feet of the site, the average setback from the OHWM is 23.3 feet. The existing cabin

on the site is only 18.1 feet from the OHWM. The proposal is thus for an improvement in the shore setback to a distance slightly exceeding the neighborhood average. Photographic evidence shows that the proposal will be entirely consistent with the existing pattern of development.

10. For adjacent homes within 300 feet of the site, the average lot coverage is 46%.

11. A Fish and Wildlife Habitat Assessment for the project was prepared by Edison Engineering. Approximately 592 square feet of habitat will be removed by the project, but the report concludes that this loss can be effectively mitigated by plantings and retention of some existing vegetation. A Planting Plan is included in the report. General site development conditions are recommended. A Protected Critical Area (PCA) is proposed for all of the open space within 50 feet of the OHWM.

12. The current dwelling receives its potable water supply from the lake. The applicants are looking for a well site for an alternative source to supply the new residence.

13. The plan is to locate septic tanks on the lake lot and to pump the effluent up to a drain field located on the back lot. No final approval for the septic system design has yet been received.

14. The record contains four comment letters from neighbors, all of whom support the project. Another neighbor appeared at the hearing and testified in favor of the application. There was no adverse testimony.

15. Various County Departments were consulted. Health noted that a septic permit has been applied for but not completed, and that more information is needed on potable water availability. No other agencies expressed concerns. In particular, the Department of Public Works had no comment about the proposed reduction in setback from the road.

16. Under SCC 14.16.810(4), the front (road) setback can be reduced where topography, critical areas, lot size and configuration impact the reasonable development of property. Here development possibilities are constrained by the limited area available on the lot between the lake and the road. Looking at the surrounding pattern of built improvements, the applicant's proposal is for reasonable development of the site in question. Requiring adherence to the standard setback would adversely impact such development.

17. The reduction in front (road) setback will maintain health, safety and welfare. Traffic safety may be improved by increased visibility.

18. Variances from the Skagit County Shoreline Management Master Program 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 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.

19. 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.

20. The proposed project is compatible with other residential development that has occurred along the lake. The increase in non-conforming structural coverage 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.

21. The project will be an improvement over present development. To deny it would constitute a hardship greater than any public benefit derived from denial.

22. 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). Shoreline applications are akin to Level II proceedings under the Unified Development Code. See SCC 14.06.050(b). A request for reduction in a Zoning Code road setback is normally a Level I proceeding, decided administratively. However, when both Level I and Level II applications are made concurrently, they are consolidated for hearing, using the process for the highest level – unless the applicants ask for the applications to be considered separately. SCC 14.06.060. There was no request for separate consideration here. Accordingly, the Examiner has held a single hearing and made a decisions on all the applications filed.

2. The applications are exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6).

3. The road setback reduction meets the requirements for approval under SCC 14.16.810(4).

4. As conditioned, the proposal is consistent with the criteria for approval of Shoreline Variances. SMP 10.03(1).

5. 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. Prior to applying for a building permit, the applicants shall obtain necessary approvals for the water supply and the sewage disposal system.

3. The applicants shall obtain a building permit and any other necessary permits. A copy of this decision shall be submitted with the building permit application.

4. The applicants shall comply with all applicable state and local regulations, including but not limited to Chapter 14.32 SCC (drainage).

5. If the applicants propose any modifications to the proposal, they shall apply for a new permit or a permit revision prior to commencing construction.

6. The applicants shall comply with all recommendations, including the Planting Plan, set forth in the Fish and Wildlife Habitat Assessment, dated March 21, 2008, prepared by Edison Engineering.

7. The PCA shall be delineated on a map and filed with the County Auditor as required by SCC 14.24.170.

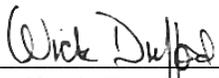
8. The project shall commence within two years of the date of final approval and be completed within five years thereof or the variances shall become void.

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

DECISION

The requested Shoreline Variances (PL08-0179) and front (road) setback reduction (PL08-0231) are approved, subject to the conditions set forth above.

DONE this 26th day of January, 2009



Wick Dufford, Hearing Examiner

Date Transmitted to Applicants: January 26, 2009

RECONSIDERATION/APPEAL - ZONING

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

RECONSIDERATION/APPEAL – SHORELINES

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.