

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicants: Randy and Jann Rogers
1958 8th Avenue North
Seattle, WA 98119

Agent: Thomas Lindsey, Architect
5706 Edens Road, Guemes Island
Anacortes, WA 98221

Request/File No: Shoreline Variance PL09-0397

Location: 5106 Potlatch Lane on the northwest shore of Guemes Island (Bellingham Channel). The site is within the NW1/4 Sec. 35, T36N, R1E, W.M. (Parcel #P68042)

Shoreline Designation: Rural Residential

Summary of Proposal: To remodel an existing non-conforming cabin by raising the roof and building a loft, creating approximately 286 square feet of additional living space. The cabin is non-conforming as to shore setback. The project will not alter the present footprint.

SEPA Compliance: The project is exempt from the procedural requirements of the State Environmental Policy Act.

Public Hearing: After reviewing the report of Planning and Development Services, (PDS) the Hearing Examiner conducted a public hearing on April 14, 2010. There was no public testimony.

Decision/Date: The application is approved, subject to conditions.
Dated April 16, 2010.

Appeal: As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with PDS within five (5) days after the date of decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with PDS within five (5) days after the date of decision or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:

www.skagitcounty.net/hearing_examiner

FINDINGS OF FACT

1. Randy and Jann Rogers (applicants) seek a Shoreline Variance to remodel a small waterfront cabin on the northwest shore of Guemes Island.

2. The property is a narrow lot located at 5106 Potlatch Lane along the shoreline of the Bellingham Channel. It is within the NW1/4 Sec. 35, T36N, R1E, W.M. The parcel number is P68042.

3. The site is accessed off of Potlatch Lane which parallels West Shore Road, near the east boundary of the property. The lot slopes gently downhill toward the water. The parcel is a wooded lot with areas of lawn and several small outbuildings, including a two-car garage, well and pump house, studio, storage shed, and boathouse. There is a bulkhead at the Ordinary High Water Mark (OHWM).

4. The neighborhood is an area with numerous single-family homes and recreational cabins built on waterfront lots created in the 1940's. The subject lot, like others in the vicinity, is only about 50 feet wide.

5. The cabin to be remodeled was built in approximately 1925. The structure is about 32 feet deep and 18.5 feet wide, covering a footprint of about 592 square feet. The building's narrow dimension parallels the shore. The cabin lies about 68 feet landward of the OHWM.

6. The proposed project is to raise the present flat roof and replace it with a pitched roof containing a small loft, adding about 286 square feet of living space. The project will raise the interior ceiling height to a minimum of seven (7) feet throughout. At present the ceiling is only 5'7" at the back of the cabin. The overall height of the structure will remain well within the 30 foot height limit. No views will be adversely affected.

7. The remodel will not alter the footprint of the cabin. The developed area within the shoreland will remain at about 22%, less than the allowed maximum of 30%.

8. The local Shoreline Master Program (SMP) establishes a shore setback in the Rural Residential environment of 50 feet or the average of neighboring homes for 300 feet on either side, whichever is greater. Here the average setback for such neighboring homes is 97 feet, and so that is the relevant shore setback. The subject cabin is therefore non-conforming as to this setback.

9. Under the SMP a nonconforming use may be enlarged if a variance is obtained. The criteria for a Shoreline Variance for development landward of the OHWM are set forth at SMP 10.03(1), as follows:

- 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. 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 does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.
- e. The public interest will suffer no substantial detriment.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

10. The Examiner finds that the proposed loft area and pitched roof will constitute a reasonable use of the property and that application of the standard shore setback would significantly interfere with such use.

11. The need for varying from the setback is related to a long-established pattern of development on this narrow sloping lot where topography and lot dimensions limit the availability of buildable space. The conditions requiring the variance are not of the applicants' making.

12. The remodeled cabin will be wholly compatible with adjacent residential development in the Potlatch Beach area. No adverse impacts on neighboring properties are anticipated.

13. The construction of this small loft, requiring no change in building footprint, does not constitute a grant of special privilege. The setback variance is the minimum necessary to permit this minor enlargement of use.

14. The public interest will not be adversely affected. The addition will add to the value of the property, constituting both a physical and an aesthetic improvement. The cumulative effect of additional requests for like actions in the area would not produce adverse impact to the shoreline environment.

15. The Examiner finds that the proposed enlargement of the nonconforming use can be accomplished without appreciable threat to the health, safety and general welfare of the public or to the shoreline environment. To deny the proposal would constitute a hardship greater than the public benefit derived from denial.

16. In connection with the remodel of the cabin, the applicants intend to move the drainfield further inland and install a new septic system. This means that the potential for water quality problems from sewage disposal will be substantially reduced. Further, the applicants plan to decommission the existing domestic well and hook up to the Potlatch Utility District water line, eliminating any concerns about the suitability of drinking water.

17. The Notice of Development Application was published on November 12 and 19, 2009. Posting and notification of property owners within 300 feet of the subject property were properly accomplished. No comment letters were received. There was no public testimony at the hearing. Consulted County Departments expressed no concerns.

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 subject matter of this proceeding. SMP 10.02.

2. The application is exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(6)(b).

3. The SMP contains an exception to the general rule against enlarging non-conforming structures when the project can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment, and when to deny the enlargement would constitute a hardship greater than the public benefit derived from denial of the non-conformity. SMP 12.04. Under the facts, the proposal qualifies for this exception.

4. An enlargement permissible under SMP 12.04, must, nevertheless, meet the applicable criteria for a variance. The facts found support a conclusion that the project, as conditioned, will be consistent with the applicable variance criteria of SMP 10.03(1).

5. Accordingly the proposed Shoreline Variance should be granted, as conditioned below.

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 applicants shall obtain any other applicable permits, including building permits, and shall abide by the conditions of same.

3. Temporary erosion/sedimentation control measures shall be used in accordance with Chapter 14.32 SCC, Drainage Code.

4. The applicants and their contractors shall comply with all other applicable County or State statutes, rules or regulations, including, but not limited to, Chapter 173-201A and 173-200 (surface and ground water quality), Chapter 173.60 WAC (maximum noise levels), Chapter 14.24 SCC (critical areas), and Chapter 14.16 SCC (zoning).

5. Adverse impacts to aesthetics shall be minimized.

6. The applicants shall submit a copy of this Hearing Examiner's decision with the building permit application.

7. The project shall be commenced within two (2) years of the date of final approval of this permit and completed within five (5) years thereof or the permit shall become void.

8. If the applicants propose any modification to the project, they shall obtain a permit revision or a new permit from PDS.

9. The shoreline setback area shall be placed into a protected critical area (PCA) pursuant to the requirements of SCC 14.24.170. The PCA may be recorded at the time of building permit application.

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

DECISION

The application for a Shoreline Variance (PL09-0397) is approved, subject to the conditions set forth above.

DONE this 16 day of April, 2010.



Wick Dufford, Hearing Examiner

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 it or disapprove it, pursuant to RCW 90.58.140.