

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Jeffrey Foushee
9247 NE 13th Street
Clyde Hill, WA 98004

Agent: Ned Nelson, Architect
1021 92nd Avenue NE
Bellevue, WA 98004

Request/File No: Shoreline Variance PL11-0180

Location: West shore of Guemes Island on Bellingham Channel at
4205 Edens Road, within NW1/4 Sec. 2, T35N, R1E, W.M.

Shoreline Designation: Rural Residential

Summary of Proposal: To increase the floor height, ceiling height and square
footage of an existing residence. The additional 427
square feet will be at the rear of the structure in a location
conforming to the Shoreline Master Program (SMP).

SEPA Compliance: Exempt

Public Hearing: October 12, 2011. A neighbor testified in favor. Planning and
Development Services (PDS) recommended approval.

Decision/Date Approval, subject to conditions. October 24, 2011.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within
five days of this decision. The decision may be appealed to the
Board of County Commissioners by filing an Appeal with PDS
within five days of the date of the decision or decision on
reconsideration, if applicable.

Online Text: The entire decision can be viewed at :
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Jeffrey Foushee seeks a shoreline variance in order to remodel his waterfront residence on the west shore of Guemes Island. The home was constructed around 1948 prior to shorelines management regulations.
2. The property is located at 4205 Edens Road and is on the shoreline of the Bellingham Channel. The parcel is number P65137 and is situated within NW1/4 Sec. 2, T35N, R1E, W.M.
3. The site is designated as Rural Residential in the local Shoreline Master Program (SMP). The residence is 38 feet from the Ordinary High Water Mark (OHWM) and therefore non-conforming to the standard shore setback of 50 feet. See SMP 7.13(2)(C), Table RD).
4. The proposal is to increase the floor elevation to prevent flood damage, to increase the ceiling height from 7 feet to 13 feet and to add an additional 427 square feet of living space to the back part of the structure. The increased living space will be landward of the 50-foot shore setback.
5. In addition to the residence, an accessory dwelling structure and covered parking area are present on the site. The accessory dwelling and covered parking will be demolished and replaced by a garage with a second-story accessory dwelling unit (ADU). The garage and ADU will be moved to a point approximately 85 feet from the OHWM.
6. The site is generally rectangular in shape, running east-west. The applicant has received an administrative zoning variance to reduce the south side yard setback from 20 feet to 13 feet. The access will be changed from the south side to the east side of the property.
7. A Shoreline Variance is required to increase the floor and ceiling height because the volume of the dwelling within the non-conforming setback will increase slightly. The volume change will occur over approximately 154 square feet of floor area within the setback, but there will be no change in the footprint as it relates to the shore.
8. Because the shore is within 200 feet of the proposed improvements, the applicant submitted a Fish and Wildlife Habitat Site Assessment on June 7, 2011, pursuant to the Critical Areas Ordinance. The report concluded that the improvements will not have a detrimental impact on the shoreline area and is expected to maintain the onsite environmental functions and values.
9. The Critical Area Ordinance requires a buffer of 100 feet inland from the OHWM. This buffer may be reduced to 75 feet if mitigation is provided. Some decking within the critical area buffer will be removed, but there will be changes in structural footprint that are within 80 to 85 feet of the OHWM (i.e, 427 square feet of residence and new garage/ADU) . As recompense for buffer reduction, the applicant will provide mitigation through a planting plan of identified native species which retains existing vegetation and drift logs. The reduced buffer will be placed in a Protected Critical Area (PCA).

10. The applicant has experienced flood events to within 1-2 inches of the finished floor. Raising the floor is, thus, sensible for safety and habitability. The effect of raising the floor, however, will be to make an increase in the ceiling height necessary. At seven feet, the present the ceiling height is substandard. With the raising of the ceiling, the roof will be reconfigured to provide a more airy living space. The building will remain a single-story structure. No views will be affected. The hardship which gives rise to this variance request is not of the applicant's making.

11. The neighborhood is a developed residential area. The applicant's residence is compatible in size and location with other residences in the vicinity. Its shore setback is, in fact, a little greater than the average within 300 feet on either side. With the proposed remodel this compatibility will continue. The proposed variance will not constitute special treatment.

12. The granting of this variance in its residential context is not likely to lead to cumulative impacts that will violate shoreline policies. The public interest will not be detrimentally affected.

13. The various County departments consulted had no concerns.

14. Public comment consisted of a letter from one neighbor and the testimony of another, both of whom expressed support.

15. The applicant provided a narrative addressing the variance criteria of SMP 10.03 for developments landward of the OHWM. The Staff Report finds that this discussion adequately addresses the criteria and the Examiner concurs. The Staff Report is by this reference incorporated herein as though fully set forth.

16. The granting of this variance poses no appreciable threat to the public health, safety and general welfare, nor to the shoreline environment or purposes of the shoreline program. To deny this proposal would impose a greater hardship than the public benefit derived from its denial.

17. 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(3).

2. The SMP permits the use of non-conforming structures to be continued, but requires special review of proposals to enlarge or increase or extend such structures to occupy a greater area. The only increase within the area of non-conformity here is to the volume of the structure above some 154 square feet of footprint. Such an increase may be approved by variance under SMP 12.04 if the Hearing Examiner finds that the project 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 Act, and that to deny the enlargement, extension or increase in the non-conformity would constitute a hardship greater than the public benefit derived from denial of the non-conformity."

The findings here support approval of this variance for a non-conforming structure under SMP 12.04

3. Under the facts, the proposal, as conditioned, is consistent with the general criteria for granting 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 carried out as described in the application materials, except as the same may be modified by these conditions.
2. The applicant shall obtain any other permits required and abide by the conditions thereof.
3. If any modification of the proposal is proposed, a permit revision shall be applied for from PDS.
4. The applicant and his contractors shall comply with all applicable local, state and federal regulations, including but not limited to state water quality standards (Chapters 173-201A and 173-200 WAC), environmental noise (Chapter 173-80 WAC), critical areas (Chapter 14.24 SCC) and zoning (Chapter 14.16 SCC).
5. Temporary erosion/sedimentation control measures shall be used in accordance with Chapter 14.32 SCC (Drainage).
6. The applicant shall comply with Northwest Clean Air Agency requirements.
7. Aesthetic impacts shall be minimized.
8. The applicant shall submit a copy of this decision with the building permit application.
9. The applicant shall comply with the recommendations of the Fish and Wildlife Habitat Assessment, issued by Wetland Resources, Inc. on July 7, 2011.

10. The shoreline setback area shall be placed into a Protected Critical Area (PCA) per the requirements of SCC 14.24.170. The PCA shall be recorded when the building permit application is submitted.

11. All plumbing, wiring, and other utility lines shall be installed underground, or otherwise rendered inconspicuous.


12. The project shall be commenced within two years for the date of final approval of the Shoreline Variance and completed within five years thereof.

13. Failure to comply with any conditions of this permit may result in permit revocation.

DECISION

The requested Shoreline Variance (PL 11-0180) is approved, subject to the conditions set forth above.

DONE, this 24th day of October, 2011.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on October 24, 2011

See Notice of Decision, Page 1, for Reconsideration and Appeal information.

Note: When and if this permit becomes final at the County level, it must be submitted to the State Department of Ecology for review and approval.