

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Stephen & Janet Mara
6514 112th Ave NE
Kirkland, WA 98033

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

Request/File No: Shoreline Variance, PL12-0347
Critical Areas Variance, PL12-0346

Location: Shore of Lake Cavanaugh, 34768 North Shore Drive, within
NE1/4 Sec. 26, T33N, R6E, W.M. Parcel No: P66420

Shoreline Designation: Rural Residential
Zoning Designation: Rural Village Residential (RVR)

Summary of Proposal: To enlarge an existing residence by replacing the east side of the structure and expanding the footprint by 189 square feet. The foundation will be replaced where it is failing. A 578 square foot addition will be added as a second story. The west side of the cabin will largely remain in its current configuration with the additions of a bay window and skylight.

SEPA Compliance: Exempt per WAC 197-11-800(6)(b).

Public Hearing: June 26, 2013. Testimony by County staff and applicants. No public testimony. Planning and Development Services recommended approval.

Decision/Date: The application is approved, subject to conditions. July 16, 2013.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within 5 days of the Shoreline decision and within 10 days of the Critical Areas decision. An appeal to the Board of County Commissioners may be filed with PDS within 5 days of the Shoreline decision and within 14 days of Critical Areas decision - or of the decision(s) 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. Stephen and Janet Mara seek to remodel and add to an existing residence on the shores of Lake Cavanaugh.
2. The site is at 34768 North Shore Drive, within the NE1/4 Sec. 26, T33N, R6E, W.M. The Parcel Number is P66420. The project site is south of the road.
3. The Shoreline designation of the property is Rural Residential. The Zoning is Rural Village Residential (RVR).
4. The property contains 7,380 square feet, measuring 60 feet along the shore by 127.81 feet on the east side by 60 feet along the road by 120.6 feet on the west side. It was platted in the 1940's prior to the adoption of current shorelines and critical areas programs.
5. The local Shoreline Master Program (SMP) was adopted by the County and approved by the State in 1976. The current Critical Areas Ordinance was adopted in 2008.
6. The current cabin on site covers 1,117 square feet. It was built in 1953. The site plan for the remodel project shows a house with a footprint of 1,382 square feet. (A small second-story area will be added over this footprint.) The additional footprint area will be added to the east side of the structure. The west side, except for the minor addition a bay window, will remain as is.
7. The small addition to the existing footprint is occasioned by the need to build a new concrete foundation for the entire cabin. The current post and pier foundation is in very poor condition.
8. The shore setback of the remodeled cabin and of the deck will remain the same as at present -- 47 feet and 30 feet from the Ordinary High Water Mark (OHWM) respectively. The 4.2-foot west side setback will also stay the same. The site coverage will change slightly from 50% to 50.6% owing to the square footage added on the ground floor.
9. The SMP established a shore setback of 50 feet, a side setback of 8 feet and a site coverage limit of 30%. The required setback from the lake under the Critical Areas Ordinance is 100 feet. Thus, the remodeled structure will remain non-conforming to the shore setback, the side yard setback and the developed area limitations of the SMP, as well as to the standard buffer requirement of the Critical Areas Ordinance.
10. The lot is typical of small, narrow lots platted along Lake Cavanaugh before modern land use regulations came into being. The rear of the lot between North Shore Drive and the cabin is occupied by the existing septic tank and a graveled parking area. The shore setback and lot coverage are typical of development in the vicinity. The completed remodel will be in keeping with its setting.

11. The project proposed increases the non-conformity of the existing structures on site only slightly. The SMP provides that, if the Examiner finds that the enlargement of a non-conforming structure on shorelines can be accomplished "without appreciable threat to the health, safety and general welfare of the public or the shoreline environment" and that "to deny the increase in the non-conformity would create a hardship greater than the public benefit derived from denial," the proposal may be permitted subject to appropriate terms and conditions attached to a variance. SMP 12.04.

12. Here the record shows no threat to health, safety or general welfare. Indeed, providing a new sturdy foundation would appear to be a health and safety improvement. Moreover, the shoreline will suffer no new detrimental impacts. The 50-foot shoreline setback area, where not developed, is to be placed in a Protected Critical Area (PCA) which will prohibit further development.

13. The Examiner notes that the area is one where non-conforming structures are the rule rather than the exception. Under the circumstances, the hardship derived from denial would exceed whatever public benefit might result from refusing to allow this modest expansion.

14. The lake shore is an area where residential development has long existed and where it is expressly permitted under the SMP. The substandard size of the lot constitutes a hardship related to the property and is not the result of the applicant's actions. The pre-existing dwelling establishes a reasonable use of the property that would be interfered with substantially by the application of the SMP dimensional standards.

15. Because of the prevalence of non-conformity in this area, the project will not constitute a grant of special privilege. The setback requested will not be significantly less than the average shore setbacks in the area. The precedential effect cannot be considered adverse where the outcome is not an exception to the norm.

16. The 100-foot critical areas buffer covers the vast majority of the depth of the lot. The small lot size and previous development of the property limit the location on which building can occur. Given the site conditions, reasonable development is not feasible consistent with the critical areas setback.

17. The majority of impacts to the critical areas buffer have already occurred from existing development. Such new impacts as are likely will be mitigated by planting native vegetation within the PCA. The applicant has provided the required Fish and Wildlife Habitat Assessment and has proposed a mitigation plan to restore and improve the buffer area, including monitoring the success of plantings made.

18. The Staff Report analyzes this application under the variance criteria of both the SMP and the Critical Areas Ordinance. The Staff finds that the proposal, as conditioned, is consistent with the criteria. The Staff Report is by this reference incorporated herein as though fully set forth. The Hearing Examiner concurs with the Staff findings and adopts the same.

19. The Examiner finds that the reasons set forth in the application justify the granting of a variance, including compliance with critical areas variance criteria. The variance is the minimum that will make possible the reasonable use of the property. The granting of a variance is in harmony with the general purpose and intent of the Uniform Development Code and will not be injurious to the neighborhood, of otherwise detrimental to public welfare.

20. County departments consulted had no objections to this request. Their requirements are included in conditions of approval.

21. Notice of the subject development was posted on the property and published in a newspaper of general circulation on October 4, 2012. Publication was repeated on October 11, 2012. Notification by mail was provided to all property owners within 300 feet of the subject property. No correspondence was received during the comment period.

22. Timely and proper notice of the public hearing was given. There was no public testimony at the hearing. The applicants said that the project is supported by their neighbors.

23. In addition to the remodel project, the applicant asked that the variance include the existing dock on the shore of the property in front of the cabin. The dock is a large U-shaped affair extending approximately 40 feet waterward of the OHWM with a 30 foot long by 7.5 foot wide section paralleling the shore two to three feet waterward of the OHWM. The eastern portion of the dock is approximately two feet from the eastern property line. The dock does not conform to the dimensional and side-setback requirements of the SMP. Review of aerial photographs indicates that the dock was built between 1991 and 1993 when the property was in different ownership. The applicant acquired the property in 1998.

24. 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, SCC 14.24.140; 14.10.020(3)

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

3. The proposed variance for the cabin meets the criteria for a Critical Areas Ordinance variance under SCC 14.24.140.

4. The proposed variance for the cabin meets the criteria for general variance from the provisions of Title 14 of the Skagit County Code. SCC 14.10.030(2)

5. The proposed variance for the cabin meets the variance criteria of the SMP for development located landward of the OHWM. SMP 10.03

6. The Examiner declines to extend the variances approved to the existing dock. The dock is not a legal non-conforming use. It was not legal when it was built. No hardship was shown which justifies the granting of a variance for this structure. The matter is therefore left to the enforcement discretion of the County.

7. 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 applicants shall obtain all permits required for this undertaking and shall abide by the conditions of same.

3. The applicants shall comply with all applicable State and local regulations, including but not limited to water quality standards for surface and ground water, maximum environmental noise levels, erosion/sedimentation control measures, clean air requirements, critical areas regulations and shorelines regulations.

4. Aesthetic impacts shall be minimized.

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

6. The applicants shall comply with the recommendations of the Fish and Wildlife Habitat Assessment and mitigation plan.

7. The shoreline setback area shall be placed in a Protected Critical Area (PCA). The PCA shall be recorded with the County Auditor at the time of building permit application.

8. If the applicants propose any modification of this proposal, they shall request and receive a permit revision from PDS prior to the start of construction.

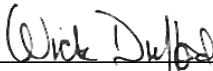
9. The project shall be commenced within two (2) years of the approval of these permits and completed within five (5) years thereof.

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

DECISION

The requested Shoreline Variances (PL12-0347) and Critical Areas Variance (PL12-0346) are approved for the proposed work on the dwelling, subject to the conditions set forth above.

DONE, this 16th day of July, 2013.



Wick Dufford, Hearing Examiner

Transmitted to the Applicants, County Staff and parties of record July 16, 2013.

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