

NOTICE OF DECISION
BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Blue Coastal Holdings, Inc.
Attn: David Gilbert
1201-168 Chadwick Court
North Vancouver, B.C. V7M 3L4

Agent: Warren Otteson
7506 Plateau Place
Yakima, WA 98908

Request/File No: Shoreline Variance, PL13-0037
Critical Areas Variance, PL13-0036
Zoning Setback Variance, PL13-0031

Location: Shore of Lake Cavanaugh, 35018 North Shore Drive, within
SW1/4 Sec. 25, T33N, R6E, W.M.; Parcel Nos: P66454, P66452,
P66430, P66429.

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

Summary of Proposal: To demolish an existing deteriorated cabin at the ordinary high
water mark (OHWM) and replace it with a new single-family
residence set back 20 feet from the OHWM. The new residence
would be located one foot from the right-of-way of North Shore
Drive. A proposed drainfield would be located on the landward
side of the road.

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

Public Hearing: July 10, 2013; testimony by County staff, the applicant, his
wife, and their representative. Three members of the
public testified, generally in favor of the proposal. Planning and
Development Services (PDS) recommended denial. The Examiner
visited the site.

Decision/Date: The application is denied. August 5, 2013.

Reconsideration/Appeal: A Request for Reconsideration may be filed within PDS within 5
days of the Shoreline decision and within 10 days of the Critical
Areas and Zoning decisions. 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 the Critical Areas and
Zoning decisions -- 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. Blue Coastal Holdings, Inc. (David Gilbert) seeks to demolish an existing deteriorated cabin and to build a new single family residence on the shore of Lake Cavanaugh.

2. The site is at 35018 North Shore Drive, with SW1/4 Sec. 25, T33N, R6E, W. M. There are four parcel numbers: P66454, P66452, P66430 and P66429. These four parcels have been certified as one lot of record pursuant to SCC 14.04.020. (AF#201212180002)

3. The property has a zoning designation of Rural Village Residential (RVR) and an environment designation of Rural Residential under the local Shoreline Master Program (SMP).

4. The standards from which variances are sought are: (a) the shore setback of the local Shoreline Master Program -- 50 feet (SMP 7.13(2)(C) Table RD); (b) the critical areas lakeshore buffer -- 100 feet (SCC 14.24.530((2); and (c) the zoning setback from the road -- 35 feet (SCC 14.16.310(5)(a)(i)).

5. A Critical Area Site Plan, dated November 20, 2012, was prepared by Edison Engineering in connection with its Fish and Wildlife Habitat and Geohazard Assessment. The plan and report call out directions via Site North which is about 58 degrees from the real north, in order to make directions simpler. The Examiner uses the same approach to directions.

6. The site is approximately 0.7 acres in size, divided by North Shore Drive. The lakeside portion (south of the road) is small and constricted in depth. As platted it is approximately 80 feet wide with a depth varying from 37.90 feet to 52.44 feet. The depth in use is somewhat greater than this, based on the location of a bulkhead placed below the natural OHWM. The lake is about 10 feet below the level of the road.

7. The existing cabin appears to be partially located on reclaimed land. At one corner it approaches the current OHWM. There are, however, several large trees waterward of the cabin. The south portion of the property also contains three sheds. There is a dock.

8. After demolition of the existing cabin (1,018 square feet), the plan is to build a new two-story, three bedroom residence, set back 20 feet from the current OHWM. The new home would be 64 feet wide along the lakefront and 30 feet deep (1920 square feet). No detail was provided regarding any porches, walkways, or patios between the proposed house and the shoreline. But, it was testified that none of the mature trees between the house and the lake would be removed.

9. Building this home at the proposed 20-foot shore setback would put the structure within one foot of the County's right-of-way for North Shore Drive. The presently paved portion is only about 20 feet wide, leaving roughly a 20 feet strip of unoccupied right-of-way between the pavement and the property. Under the circumstances, parking necessarily occurs within the right-of-way.

10. The north portion of the property (landward of the road) is 80 feet wide by approximately 300 feet deep. This area is forested and contains no development. It is relatively steep near the road (owing to the cut made for North Shore Drive) and then becomes less so proceeding toward the north boundary. The applicant proposes to install a septic drainfield for the new residence behind the initially steep slope. In the future he may put a garage and office near the road, but that project is not included in the instant application.

11. A seasonal non-fish-bearing stream runs down the east side of the back portion of the subject property, empties into road side ditch on the north side of the pavement, and ultimately traverses a culvert under the road to the edge of the lake.

12. The instant application proposes development that impinges on the critical area buffer next to the lake. There is no explicit plan for mitigating impacts on this buffer. However, the Fish and Wildlife assessment concludes that there is adequate room at the top of the property for buffer averaging to accommodate both the proposed new house and a garage/office above the road.

13. To the immediate west, the neighboring property along the lake is also owned by the applicant. This parcel has been developed with an attractive and substantial lakeside dwelling under a variance granted over 15 years ago (PL96-0265). The approved structure is within about a foot of the right-of-way.

14. Surrounding land uses include single-family residential and recreational homes, most along the lake side of the road. The immediate neighbor to the east has a house developed on the landward side of the road on topography similar to applicant's back portion. The waterfront portion of this property is devoted to recreational use.

15. The application was circulated to various County departments. Public Works has consistently opposed parking in the County's right-of-way. Here it declined to support the one-foot front setback proposed, but indicated a willingness to agree to a five foot setback from the right-of-way.

16. Public notice of the application and of the hearing was properly given. No written public comments on the application were received. At the hearing two area residents testified in favor of the application, calling it a significant improvement of the property's condition. Another, while not opposed, generally expressed concern for protection of the lake.

17. The applicant and his wife emphasized their desire to remove the existing run-down "eye-sore" structure, and noted that the new house would increase the setback from the water. They advised that the setback from the road approved for their house next door is similar to what is being requested here, and said that there is a lot of room to park on the right-of-way. They argued that the size of the proposed structure will be appropriate for the neighborhood. They maintained that building on the back portion of the property presents problems because of septic system needs, the presence of the stream, and challenging topography.

18. The applicant's agent drew attention to the smallness of the lots in this area and the large amount of development all around the lake that is non-conforming. He stated that the structure's proposed size would be in keeping with other homes in the area. He urged that the development of the back lot is undesirable from an economic standpoint, as well as challenging because of physical features.

18. The Staff Report recommended denial of the application after analyzing the proposal in light of SMP variance criteria, Critical Areas variance criteria, and Zoning setback reduction criteria.

19. The Staff found size incompatibility, concluding the proposed new house would be out-of scale with most existing development in the area. On this point the Examiner disagrees. While the structure would be larger than some, the Examiner finds that it would be within the reasonable range of construction of homes in the vicinity. Nevertheless, reducing the dimensions of the house would not resolve the setback difficulties. The setback problems are the result of the shallowness of the water side of the lot, not of the size of the proposed house. A house simply cannot be built on the lake side of the road consistent with the standard setbacks. The area is too small.

20. The Staff determined, in effect, that siting the house as proposed is not necessary to avoid significant interference with a reasonable use of the property. The Staff concluded that there is space for a home on the upland side of Northshore Drive that would not require variances from the setbacks from the lake. While there are some constraints on building there, the Examiner agrees with Staff that such construction is feasible. He finds further that critical areas mitigation measures could be designed to accommodate such development. As a consequence, reasonable use of the property can be achieved without building the proposed house on the lake side of the road.

21. With development on the north side, the 35- foot zoning setback might require some adjustment. Public Works has shown itself amenable to some reduction in the zoning setback, just not the one-foot setback requested on the south side of the road for this application.

22. The prime difficulty of this case is that so much development along Lake Cavanaugh has been allowed to occur in violation of the relevant setback standards. Most of this is the outgrowth of allowing the preservation of a pattern that developed long before modern land use regulations and has involved the remodeling of existing cabins on their original footprints -- in effect, authorizing the continuation, repair and modest expansion of non-conforming uses as allowed by Chapter 12 of the SMP.

23. This case apparently represents a conscious decision by Staff to avoid lumping the construction of new dwellings in with the repair of existing ones. This is a way of limiting the cumulative impact of requests for relief from modern setback requirements. The Examiner believes that this is an appropriate approach to a difficult regulatory situation.

24. However, like all exercises in holding the line, this one has its down side. The house proposed here would undeniably be an improvement over what is currently on the lakeside

portion of the property. It would be new. It would have a larger setback from the water. But those are not reasons for suspending the setback requirements when the alternative of complying with them is available. Moreover, there is nothing to prevent the applicants from tearing down the derelict cabin, whether or not they get to build a new structure on the lake side of the road.

25. Any conclusions 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, SCC 14.10.020(3), SCC 14.06.050(1)(xii).

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 shoreline variance does not meet the criterion requiring that the strict application of standards "precludes or significantly interferes with a reasonable use of the property." SMP 10.03(1)(a).

4. The zoning setback decision in the instant case is normally an administrative determination, but was consolidated with the Level II variance requests for hearing by the Examiner. Absent extraordinary justification, the Examiner concludes that allowing parking within the right-of-way is inconsistent with the public health, safety and welfare. SCC 14.16.810(4). The record discloses no such justification.

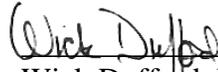
5. Because of the above conclusions on shorelines and zoning, there is no need to rule on the critical areas variance question and the Examiner declines to do so.

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The applications for a shoreline variance and for a zoning setback reduction are denied.

DONE, this 5th day of August, 2013.



Wick Dufford, Hearing Examiner

Transmitted to Applicants, staff and parties of record, August 5, 2013

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