

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicants: David and Peggy Labuhn
1127 Fifth Place
Mukilteo, WA 98275

Agent: Jackie Chriest
3368 Bamboo Lane
Mount Vernon, WA 98274

Request/File No: Zoning Setback Variance, PL13-0173
Shoreline Variance, PL13-0174
Critical Areas Variance, PL13-0175

Location: Shore of Lake Cavanaugh at 35064 North Shore Drive, within
SW1/4 Sec. 25, T33N, R6E, W.M. Parcels P66466, P66443.

Shoreline Designation: Rural Residential

SEPA Compliance: Exempt

Public Hearing: April 9, 2014. Testimony by Staff and Applicant. No public
testimony. Planning and Development Services (PDS)
recommended denial, absent aggregation of the two lots involved.

Decision: The application is approved, subject to conditions.

Reconsideration/Appeal: A Request for Reconsideration may be filed within PDS within 5
days of this decision. The decision may be appealed to the Board
of County Commissioners by filing an appeal with PDS within 5
days of the date of 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. David and Peggy Labuhn (applicants) seek to demolish an old cabin and construct a new residence in its place along the shore of Lake Cavanaugh.

2. The site is at 35064 North Shore Drive. The property is located within the SW1/4 Sec. 25, T33N, R6E, W.M.

3. The applicants own both a lakefront lot (P66466) and an upland lot across the road (P66443). The lakefront lot is the site of the cabin. There is a private dock providing recreational access. An existing drainfield has been built across the road on the uplands. The applicants hope to build the new house by the lake and keep the drainfield where it is.

4. The lakefront lot is small similar to the neighboring lots, all of which were platted years before the adoption of the Shoreline Management Act, Critical Areas Ordinance and current zoning.

5. The lake lot has approximately 64 feet of waterfront and is 70 to 75 feet deep. The rear lot is larger, measuring 65 feet along the road and running inland for 265 to 295 feet. The applicants have stated an intention to aggregate the two lots into a single parcel. The instant decision is predicated on this aggregation being accomplished.

6. The proposal will involve demolishing the old 504 square foot-cabin and building a new 1,073 square-foot two-story residence with a daylight basement. The Ordinary High Water Mark (OHWM) at the site is bordered by a rock wall. The existing cabin at the closest point is 7.82 feet from the OHWM. The present deck is essentially at the OHWM. The new house will be located 18.6 feet from the OHWM at the southeast corner and 39.2 feet from the OHWM at the southwest corner. The new elevated deck will be 11.5 feet from the OHWM at the closest point.

7. The shore-side parcel slopes downhill from North Shore Drive to the proposed location of the new residence. The applicants propose to terrace the slope with construction of two 4-foot-high retaining walls between the road and the residence. The terraced retaining walls will extend from the western property boundary to the northern corner of the residence and from the northeast corner of the residence to the eastern property boundary, connecting to an existing 7-foot-high retaining wall. Approximately 143 cubic yards of fill, 125 cubic yards from onsite, will be placed behind the retaining walls, providing off-street parking and second story access to the residence.

8. The landward parcel is steeper than the lakefront parcel. It is presently forested and contains an identified geologic hazard area at the extreme north end. The only development on this lot now is the drainfield for the existing septic system which is located outside of the geohazard buffer.

9. The project proposed requires a zoning variance (PL13-0173) to reduce the setback from the North Shore Drive right-of-way from 35 to 18 feet, a shoreline variance (PL13-0174)

reduce the setback from the OHWM of the lake from 50 feet to 11.5 feet, and a critical areas variance (PL13-0175) to reduce the critical areas buffer bordering the lake from 100 feet to 11.5 feet.

10. The developed area on the aggregated property will be 25%, meeting the 30% limitation for both lot coverage and developed area.

11. The site is on a stretch of lakeshore already heavily developed with water front homes. The existing cabin is flanked along the lakefront by residences of more recent vintage and greater size. The average size of homes within this platted block is 1,200 square feet, but the average within 300 feet of the subject site is about 1,500 square feet. The neighboring homes are likewise generally two-story structures with daylight basements.

12. Building on the back portion of the property would present difficulties. Because of the topography and septic drain field, only 12 feet would be available for building if a 20-foot setback from the road right-of-way were observed. The ground level at that location is 23 feet higher than the road. Significant excavation would be required to build there and numerous large trees would have to be removed.

13. Out of 21 other properties in the area that are divided by North Shore Drive, 20 have lake side residences. To construct on the upland across the road here, extensive excavation into rock material would be required.

14. The applicants have obtained a water right permit from the State to take water for the new home from the lake. A filtering system for purification to potable standards will be installed.

15. Currently there is no parking available at the site, except in the County right-of way. The proposal will allow construction of a parking area outside of the right of way and waterward of North Shore Drive. The proposed retaining walls will end at the property line and will not be an obstruction to traffic.

16. The proposed increase in setback from the lake should reduce impacts to the functions and values of the shoreline buffer. The increase in developed area on the water front parcel will be modest, mostly required to provide the two parking spaces off of the right-of-way. Overall, the project will cover 884 more square feet of the critical areas buffer than does present development on the site. Mitigation of impacts to this buffer will be provided by planting 884 square feet of native vegetation on the water front side of the property.

17. The proposed 11.5-foot setback of the deck from the OHWM represents only a corner of the deck. The applicant states that this setback could be modified to 15.6 feet. The setback at the other end of the deck is 29.7 feet. Neighboring homes are also situated close to the OHWM. The average setback at homes within 300 feet of the subject site is 16.7 feet.

18. Viewing the entire record, the Examiner finds that the strict application of the dimensional requirements of the local Shoreline Master Program (SMP) and of the Critical Areas

Ordinance would significantly interfere with reasonable use of the property. The hardship underlying the variance requests is related to the restricted lakefront lot area and to natural features across the road. The proposed new home will be compatible with other permitted activities in the vicinity and its placement will, under all the circumstances, constitute the minimum necessary to afford relief. The public interest will suffer no detrimental effects.

19. Staff determined that the reduced zoning setback sought on the road side of the lake parcel will be consistent with the maintenance of public health, safety and welfare. The project will make space available off of the right-of-way for parking two cars as required by Code. However, the zoning variance by itself will not provide sufficient relief to avoid the need for a dimensional variance from the critical areas shore buffer.

20. A professional site assessment for critical areas impacts acknowledged the need for a variance, but identified no significant adverse environmental impacts from the project. The assessment recommended the 884 square feet of plantings that the applicants propose to install.

21. The applicants argue and the Examiner agrees that the excavation and tree removal required for building on the back lot would create a greater environmental impact than building at the proposed location.

22. Notice of the application was properly given, as was notice of the public hearing. No public comment letters were received during the comment period following the Notice of Development. Two comment letters were received after the Notice of Public Hearing. Both of these comments were from neighbors; neither had objections to the project.

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

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SMP 10.02.(3), SCC 14.24.140(1)(b)..

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

3. The project meets the requirements for a zoning setback variance. SCC 14.16.810(4).

4. The project, as conditioned, meets the criteria for a Shoreline Variance. SMP 10.03.

5. The project, as conditioned, meets the criteria for a Critical Areas Ordinance variance. SCC 14.24.140(3).

6. 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 all permits required for this project and shall abide by the conditions of same.
3. Prior to building permit application, Parcels P66466 and P66443 shall be aggregated through means of a boundary line adjustment approved by PDS.
4. The setback from the OHWM of the nearest point on the house's deck from shall be modified to 15.6 feet and construction plans shall be modified accordingly.
5. The applicant shall follow the recommendations of Edison Engineering as set forth in the Fish and Wildlife Habitat and Geohazard Assessment, dated March 12, 2013.
6. The mitigation plan for enhancement of the remaining shoreline buffer shall be fully implemented.
7. All mitigation plants shall maintain a survival rate of 100% following the first year and 80% following years three and five. If the plants do not meet the specified survival rate, a qualified professional shall assess the site and determine the best method to improve the rate of survival for additional native plants.
8. The applicants shall adhere to the limitations of their State-issued water rights permit and shall comply with any additional requirements concerning the use of water within the house imposed by the Skagit County Health Department.
9. The applicants and their contractors shall comply with all applicable state and local regulations, including but not limited to State Water Quality Criteria for Surface and Ground Water, Chapters 173-301A and 173-200 WAC; State Maximum Environmental Noise Levels, Chapter 173-60 WAC; Skagit County Zoning Ordinance, Chapter 14.16 SCC, and Skagit County Drainage Ordinance, Chapter 14.32 SCC (in particular measures for temporary erosion/sedimentation control).
10. The applicants shall submit a copy of this decision with the building permit application.
11. The shore setback buffer shall be placed in a Protected Critical Area (PCA) per the requirements of SCC 14.24.090. The PCA shall be recorded at the time of building permit application.
12. If the applicants propose any modification of the project as approved, they shall request and receive a permit revision from PDS prior to starting construction.

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

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

DECISION

The requested Zoning Variance (PL13-0173), Shoreline Variance (PL13-0174) and Critical Areas Variance (PL13-0175) are approved, subject to the conditions set forth above.

DONE, this 30th day of April, 2014.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, April 30, 2014.

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