

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicants: Samuel and Diane Hill
15090 Beaver Marsh Road
Mount Vernon, WA 98273

Request: Shoreline Variance, PL17-0349
Administrative Critical Areas Variance, PL17-0105

Location: North shore of Deception Pass Channel at 15709 Yokeko Drive,
within the SE1/4 Sec.24, T34N, R1E, W.M.
Parcel No. P64894

Shoreline Designation: Rural Residential

Zoning Designation: Rural Intermediate

Summary of Proposal: To replace a single family residence using the concrete basement and foundation of the existing home. The existing garage will be incorporated into the new home footprint. A new septic system will be installed. Most of the new construction will be located 50 feet or more from the Ordinary High Water Mark (OHWM). About 318 square feet of new deck will be constructed over the existing basement and encroach about four feet into the 50-foot setback.

SEPA Compliance: Exempt

Public Hearing: January 10, 2018, Testimony by Planning and Development Services (PDS) staff and applicant Samuel Hill. No public testimony.

Decision/Date: The application is approved, subject to conditions.
January 30, 2018.

Online Text: The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Samuel and Diane Hill seek to replace a single family residence on the north shore of Deception Pass Channel

2. The site is at 15709 Yokeko Drive within SE1/4 Sec. 24, T34N, R1E, W.M. The property encompasses Lots 38 and 39 of Deception Pass Waterfront Tracts. The parcel number is P64894. The shoreline designation of the property is Rural Residential. The zoning designation is Rural Intermediate.

3. The existing two-bedroom home on the property was built in 1945, long before the passage of contemporary shoreline management and critical areas legislation. The present home contains approximately 1496 square feet of living area with two detached garages landward of the house and a 255-square-foot boathouse immediately adjacent to the shore. The property slopes down toward the water from the road. There are numerous mature native trees and shrubs.

4. The surrounding parcels contain residential and recreational uses. Most lots are well-vegetated with mature trees above the rocky shore. Some historic cabins in the vicinity have already been replaced with modern homes. The proposal seeks to follow this trend. The new home is expected to blend with other homes in the area.

5. The proposal is to replace the original home with a new 2,241 square-foot house and deck, using the concrete basement and foundation of the existing house. The new home footprint will incorporate an existing garage on the upland side. The project includes installation of a new septic system on the upper portion of the site near the road. On-site parking will remain adequate.

6. Under the local Shoreline Master Program, the shore setback for residences in the Rural Residential environment is the average of setbacks for existing dwelling units within 300 feet of the side property lines. In this vicinity that average is approximately 50 feet from the ordinary high water mark (OHWM). Most of the construction proposed here will be located more than 50 feet from the OHWM.

7. However, the existing foundation which the applicant proposes to use extends to approximately 46 feet from the OHWM. About 318 square feet of new deck will be built over the existing basement, within the 50-foot setback area. Staff considers this portion of the proposal to be an expansion of a non-conforming use under the local Shoreline Master Program (SMP).

8. The Critical Areas setback (buffer) in this area is 100 feet from the OHWM. Almost all of the construction proposed here will occur within this buffer.

9. Fish and Wildlife Habitat and ESA/EFH analyses were performed by Edison Engineering which prepared a report dated February 12, 2017. The functions and values of the

marine shoreline buffer will be little affected by this project. Mitigation in the form of a planting plan was proposed in the report.

10. A portion of the site is located within a flood hazard area. The house, however, is located out of this special hazard area.

11. Notice of the application was published, mailed and posted as required by law. No comments from Federal, State or Tribal resource agencies were received. The only public comment received was a letter from a neighbor endorsing the project.

12. The proposal was circulated to interested agencies. Their concerns are addressed in conditions of approval.

13. Residential Uses are permitted outright in in the relevant shoreline and land use zones, subject to general regulations. The proposal will meet required side setbacks, site coverage and height standards. The proposed size of the residence is comparable to the scale of neighboring homes. The only concern here is with varying the shore setbacks.

14. The basement and foundation of the original home were cut into the rocky hillside. The project will take advantage of this initial work to avoid substantial new shoreline impacts. The proposed replacement home project will be a reasonable use of the property. The variance sought is the minimum necessary for this use.

15. Using the original foundation precludes moving the house closer to the road. Moreover, the area near the road is needed to locate the septic drainfield the required distance from the OHWM.

16. All areas disturbed during construction will be stabilized by native vegetation. The new home will not encroach farther toward the shore than does the current house.

17. The Staff Report analyzes the proposal against the variance criteria for shoreline developments and for critical areas developments. The Staff has found that the proposal meets the relevant requirements for variance approval. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

18. To the extent that this project may constitute the enlargement of a non-conforming use, the Examiner finds that it can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment and purpose of the SMP and Shoreline Management Act. To deny such enlargement would constitute a greater hardship than the public benefit derived from denial of the non-conformity.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SMP 10.02(3), SCC 14.06.050(1)(b)(i).
2. The applications are exempt from the requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(e).
3. As conditioned, the proposed Shoreline Variance and Critical Areas Variance meet the relevant approval criteria. SMP 10.03(1), SCC 14.10.040, SCC 14.24.140(3).
4. The variances are in harmony with the general purpose and intent of the Skagit County Code.
5. 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. All required permits shall be obtained and their conditions shall be adhered to.
3. The recommendations of the Fish and Wildlife Habitat site assessment prepared by Edison Engineering, dated February 12, 2017, are incorporated herein as conditions of approval, unless modified herein.
4. Within 30 days of plant installation, the applicant shall submit an as-built site plan of the mitigation plantings as well as provide photographs of the installed plants.
5. 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 this survival rate, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.
6. A Protected Critical Area (PCA) site plan shall be recorded with the County Auditor's office prior to submittal of the building permit application.
7. The critical areas variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval. Knowledge of the expiration date is the responsibility of the applicant.
8. The applicant and its contractors shall comply with all applicable State and local regulations, including but not limited to Chapters 173-200 and 173-201A WAC (surface and ground water quality), Chapter 173-60 WAC (noise), Chapter 14.32 SCC (storm water

management), Chapter 14.16 SCC (zoning). Appropriate temporary erosion/sedimentation control measures shall be used.

9. A copy of this decision shall be submitted with the building permit application.

10. The project shall be commenced within two years of the final approval of the shoreline variance and completed within five years thereof.

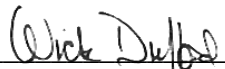
11. If the applicants propose any modification of the subject project, they shall notify Planning and Development Services prior to the start of construction.

12. Failure to comply with any condition of approval may result in permit revocation.

DECISION

The application for a Shoreline Variance (PL17-0349) and the application for a Critical Areas Variance (PL17-0105) are approved, subject to the conditions set forth above.

SO ORDERED, this 30th day of January, 2018.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and Staff, January 30, 2018.

RECONSIDERATION/APPEAL

Shorelines -- Reconsideration may be requested by filing with PDS within 5 days of this Decision. Appeal is to the County Commissioners by filing with PDS within 5 days of this decision, or within 5 days of the decision on reconsideration if applicable.

Critical Areas – Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the County Commissioners by filing with PDS within 14 days of this decision, or within 14 days of the decision on reconsideration if applicable.