

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Jeff Stewart  
3421 60<sup>th</sup> Ave. SW  
Seattle, WA 98116
- Requests:** Shoreline Variance, PL16-0397  
Critical Areas Variance, PL16-0430  
Zoning Setback Variance, PL17-0247
- Location:** 4849 Mercer Road, Samish Island, within a portion of Gov't Lot 2.  
Sec. 26, T36N, R2E, W.M. Parcel No: 47131
- Summary of Proposal:** To build a new single family residence on the footprint of an existing residence with small extensions east and west parallel to the seawall. The site is on level ground at the foot of a coastal bluff. The project includes a new shop/office to replace an existing shop, and a small platform at the top of the bank to support solar panels. A concrete retaining wall with tie-backs will be constructed at the base of the slope.
- SEPA Compliance:** Exempt
- Public Hearing:** February 28, 2018. Testimony by Planning and Development Services (PDS) staff and by applicant. No public testimony.
- Decision/ Date:** The application is approved, subject to conditions. March 13, 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 decision on reconsideration if applicable.  
Critical Areas, Zoning—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 decision on reconsideration if applicable.
- Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## FINDINGS OF FACT

1. Jeff Stewart (applicant) seeks to replace an existing cabin with a new slightly larger home at the north end of Samish Island.

2. The address is 4849 Mercer Road. The location is a portion of Government Lot 2, Sec. 26, T36N, R2E, W.M. (Parcel #P47131). The zoning is Rural Intermediate. The shoreline designation is Rural Residential.

3. The majority of the parcel consists of a north facing steep coastal bluff which extends to an elevation of approximately 89 feet above mean sea level. At the base of the slope is a level area, about 109 feet wide by 61 feet deep, which was created by placing fill behind a bulkhead marking the Ordinary High Water Mark (OHWM). The bulkhead and fill were placed prior to the effective date of the Shoreline Management Act and Skagit County Shoreline Master Program (SMP).

4. The home-site is on the fill at the foot of the slope. Access to it is provided by an easement from Mercer Road which extends down the slope to the west of the lot.

5. The property is currently developed with a 1,246 square-foot cabin, built in 1928 and a small shop building. The proposal is to demolish these structures and replace them with a new residence about 370 square feet larger than the cabin, and a new shop/office.

6. An existing wooden retaining wall at the base of the slope is to be replaced with a concrete structure with tie-backs. At the top of the bluff, the applicant wishes to install a small platform to support solar panels.

7. The new residence will be located 30 feet from the OHWM, five feet closer to the shore than the present cabin. This placement will provide a four-foot buffer between the residence and the proposed retaining wall for the slope. The applicant is requesting a shoreline variance and a critical areas variance for the home to permit the 30-foot shore setback and to allow an eastern side-yard setback of 3.9 feet.

8. The shop building currently rests on the western property line, immediately adjacent to a building on the neighboring property. The 200-square-foot 'replacement shop/office will be 24 feet high and separated from the adjacent structure by one foot. It will be 33 feet from the OHWM. The applicant is requesting a shoreline and critical areas variance to permit this setback from the shore, to reduce the side-yard setback on the west to one foot, and to allow the increased shop height.

9. Finally, the applicant seeks a zoning setback variance for front and rear yard setbacks. Under the zoning code, the access location on the western boundary of the property is the front of the parcel. The proposed structures in both front and rear will not meet the zoning setbacks. The request is to reduce the front yard setback for the shop from 35 feet to one foot and for the residence from 25 feet to 18.5 feet. A reduction from 25 feet to 3.9 feet is requested for the rear setback for the residence.

10. There are a number of houses along the shoreline strip on either side of the subject property. The new home will be consistent in size and height with existing residences in the vicinity. No views will be affected.

11. The application was modified twice and in each case was posted, published and mailed as required by law. No comment letters were received during any of the comment periods. A letter dated two-days before the hearing was received from a neighbor. The letter expressed concern about drainage and slides on the access road and about the effect of the solar panels on the bank. The letter asked if a geo-tech had approved the project.

12. Professional geotechnical evaluation was conducted for both the slope and the solar panel platform. The consultant observed that the slope is heavily vegetated with trees and other plants, noting the presence of a couple of old growth stumps that appear to be greater than 100 years in age. No water or water erosion was observed on the slope. The existing wooden retaining wall along the foot of the slope was found to be in relatively good shape. Planting and maintaining appropriate vegetation south of the retaining wall were identified as essential to the stability of the slope.

13. The evaluation of the platform for the solar panels found that the proposed location is stable and concluded that the platform will cause no instability or disturbance of the slope. No erosion was observed at the location of the proposed panels.

14. In order to address any potential instability of the slope, the geotechnical consultants recommended construction of a new engineered concrete retaining wall with a tie back system. The recommendation was that the wall be at least two feet higher than the current four-foot wooden structure. The consultants also proposed that steps be taken to prevent the concentrated flow of water onto the face of the slope, including the tight-lining of all surface water collected from the solar array platform to the base of the slope. Finally, the consultants called for the slope to be planted with selective native vegetation

15. The project, as proposed, incorporates the recommendations of the geotechnical review. The Examiner concludes that geo-technical issues have been adequately addressed.

16. In addition, a professional Fish and Wildlife Habitat Conservation Areas Report was prepared. It concluded that buffer impacts will be minimal. To compensate for the minor encroachment on protected buffer areas (from minor enlargement of the house footprint), a mitigation planting plan was agreed to.

17. The western portion of the site is located within a flood hazard area. A floodplain development permit will be required.

18. The proposal was circulated to various County departments. Their comments are reflected in conditions of approval.

19. The Staff Report analyzed this proposal against the approval criteria for a Shoreline Variance, a Critical Areas Variance and a Zoning Setback Variance and found that all of the relevant approval criteria are met. 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.

19. The proposal calls for a reasonable use of the property, consistent with uses being made of other properties in the immediate vicinity. Development of the lot is constrained by topography. The variances applied for are the minimum that will make possible the reasonable use sought.

20. The inability of the applicant to meet the dimensional standards is not the result of the actions of the owner. The granting of the variance is justified to cure a special circumstance.

21. 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 14.10.020(3).

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 variances 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 critical areas site assessment reports shall be considered conditions, except as may be modified below.

4. A retaining wall at the base of the slope shall be constructed to minimize the risk of slope failure. The retaining wall with a tie back system shall be designed and constructed under the direction of a licensed geotechnical engineer. The engineered retaining wall shall be installed prior to construction of the new residence. The new retaining wall shall be constructed

a minimum of two feet higher than the current four-foot wood retaining wall, a minimum of six feet high. The retaining wall will require a flood plain permit and a building permit.

5. The applicant shall minimize the flow of water onto the face of the slope. No concentrated flow of water shall be allowed to run onto the face of the slope. Concentrated surface water runoff shall be collected at the top of the slope and tight lined to the base of the slope. The applicant shall submit a design for a stormwater collection and conveyance system with the building permit application.

6. The slope shall be planted with native vegetation to increase the stability of the slope. A plan to enhance native vegetation on the slope shall be submitted with the building permit application for the retaining wall.

7. The solar panel platform shall be located 15 feet or more from the top edge of the coastal bluff. Any concentrated surface water runoff from the pad shall be collected and tight-lined to the base of the slope.

8. The mitigation plan for enhancement of the remaining shoreline buffer area shall be fully implemented prior to final inspection of the building permit for the replacement home.

9. All shoreline buffer 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 those survival rates, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.

10. The proposal shall comply with the provisions of Chapter 14.34 SCC (flood damage prevention).

11. The applicant and his contractors shall comply with all other applicable State and local regulations, including but not limited to, Chapters 173-200 and 201A (surface and ground water quality), Chapter 173-60 (noise), Chapter 14.16 SCC (zoning). Chapter 14.32 SCC (stormwater – including temporary erosion and sedimentation control measures).

12. The applicant shall submit a copy of this decision with the building permit application.

13. 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.

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

15. If the applicant proposes any modification of this proposal, he shall notify Planning and Development Services prior to the start of construction.

16. The remaining critical area buffer and slope shall be placed in a Protected Critical Area as required by SCC 14.24.090. The PCA and site plan shall be recorded by the time of building permit application.

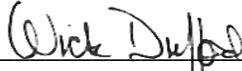
17. A fire rated wall per the International Residential Code Sec. R302 is required for the west shop/office wall.

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

### **DECISION**

The applications for a Shoreline Variance (PL16-0397), a Critical Areas Variance (PL16-0430), and Zoning Setback Variance (PL17-0247) are approved, subject to the conditions set forth above.

**SO ORDERED**, this 13, day of March, 2018.

  
\_\_\_\_\_  
Wick Dufford, Hearing Examiner

Transmitted to Applicant and Staff, March 13, 2018.