

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Roger Gray
4936 West Shore Road
Anacortes, WA 98221

File No: PL04-0758

Request: Variances

Location: 4936 West Shore Road, Guemes Island, within a portion of
Sec. 26, T36N, R1E, W.M.

Land Use Designation: Rural Intermediate (RI)

Summary of Proposal: Variances from the front setback for an office-shop with
attached stairway and for an accessory dwelling unit,
garage and pump house. The setback is from an easement
that has never, in fact, been used.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
On March 9, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Roger Gray (applicant) seeks front setback variances for two structures at 4936 West Shore Road, on Guemes Island.

2. The property is bordered on the east by West Shore Road and on the west by the Bellingham Channel. The property is within a portion of Sec. 26, T36N, R1E, W.M. The zoning is Rural Intermediate (RI).

3. There are currently two legal residences on the property which were determined to be associated with separate lots of record for development purposes per Lot Certifications PL04-0770 and PL04-0797.

4. The front setback for lots in the RI zone is 35 feet. SCC 14.16.320(5). The property contains a 40-foot wide access easement which parallels the actual location of West Shore Road on the east. The requested variance is from this private easement, not from the existing road. The easement was created in the 1940's, though on this property it has never been developed or used as a road. It is, in fact, filled with mature trees. If the easement did not exist, there would be no need for the variances.

5. The proposed structures are a 24' by 32' office-shop building and a 26' by 34' accessory dwelling unit (ADU) built above a garage and pump house. Stairs attached to the office-shop building will be set back 20 from the access easement. The ADU structure will be set back two feet from the access easement.

6. The land bordering the saltwater frontage is low lying and subject to flooding. Further inland, the topography slopes upward. The proposed structures will be located on high ground beyond the 200-foot shoreline strip. This siting was reviewed by a professional landscaper and endorsed from the standpoint of preserving valuable old-growth conifers and hardwoods.

7. The subject office-shop will replace an existing shop that is below the flood line. The existing shop will be razed, thus increasing the vegetation zone within the shoreline area.

8. Overall the existing improvements on the property reflect a shoreline development coverage that is close to the regulatory limit. To place the ADU closer to the water would require fill which would likely smother nearby tree roots and at the same time cause the development coverage to increase to the point where existing improvements would need to be torn out. Additional walkways, decks, porches and driveway pads would be foreclosed. The proposed ADU siting has the advantage of hiding the structure in the trees and avoiding additional intrusion into the shoreland area.

9. The evidence strongly suggests that the 40-foot wide access easement on the property will never be needed. Eventually, much of its length, including the portion on the subject property, may be relinquished by the affected owners. Therefore, the effective setback here (the setback from the actual road) will likely always exceed 35 feet.

10. The application was filed on December 29, 2004. Notice of Application was duly published, posted and mailed. The only comments received were from immediate neighbors who endorsed the variance requests.

11. Variance criteria are set forth at SCC 14.10.030, as follows:

(a) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district. Topics to be addressed include topographic or critical area constraints that make use of the particular site infeasible without the proposed variance.

(b) Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under SCC Titles 14 and 15.

(c) The special conditions and circumstances do not result from the actions of the Applicant.

(d) The granting of the variance requested will not confer on the Applicant any special privilege that is denied by SCC Titles 14 and 15 to other lands, structures, or buildings in the same district.

(e) [The proposal meets special criteria for the type of variance requested, *i.e.*, critical areas variance, shorelines variance, public works alternative, agricultural siting variance, flood hazard variance].

(f) If applicable, the applicant must explain why, if a variance is denied, the Applicant would be denied all reasonable use of his or her property.

12. The Staff Report analyzes the application in light of these criteria and determines that, as conditioned, the variances will be consistent with them. 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.

13. Given existing development and the topography, the proposed site of the new structures represents the most environmentally sensitive use of the site. Moreover the encroachment of these structures into the nominal setback will probably never interfere with maintenance of the actual separation that the Code seeks to achieve.

14. The reasons set forth in the application justify the granting of the variances. The additional development proposed is a reasonable use of this residential property. Failure to grant these variances would impact this reasonable development. Under all the circumstances the variances represent the minimum needed for optimal siting. The granting of the variances will be in harmony with the general purpose and intent of the Unified Development Code and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

15. 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 persons and the subject matter of this proceeding.

2. The application is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b).

3. There was no discussion by the applicant of why a variance is needed to prevent denial of “all reasonable use of the property.” This criterion comes into play only “if applicable” which means in cases where there is some question that a failure to grant the variance would result in a constitutional taking of the property. No such situation is presented here.

4. The findings support a conclusion that the proposal, as conditioned, meets the applicable variance requirements. SCC 14.10.030.

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

CONDITIONS

1. The project shall be constructed as shown in the application materials, except as the same may be modified by these conditions.

2. At the time of submitting for a building permit the applicant shall obtain all other necessary permits and approvals in association with the development of the property.

3. All applicable state and local regulations shall be complied with, including regulations concerning septic systems and drinking water systems. Any well variances required by the State Department of Ecology shall be obtained.

4. All review fees must be paid in full prior to building permit approval.
5. Authorization to conduct development activities hereunder shall terminate after five years from the effective date hereof.
6. Failure to comply with any permit conditions may result in permit revocation.

DECISION

The requested variances are approved, subject to the conditions set forth above.

Date of Action: March 23, 2005.

Date Transmitted to Applicant: March 23, 2005



Wick Dufford, Hearing Examiner

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.