

**BEFORE THE SKAGIT COUNTY HEARING EXAMNER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicants:** David and Jean Cole  
3227 Norton Avenue  
Everett, WA 98021

**File Nos:** PL05-0640

**Request:** Shoreline Variance Permit

**Location:** 33472 East Tree Bark Lane on the shores of Lake Cavanaugh, within a portion of Sec. 27, T33N, R6E, W.M.

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To allow a 54 square-foot deck, a stairway, and an enclosed former daylight basement on a lakefront cabin. The deck is approximately 11 feet landward of the Ordinary High Water Mark (OHWM) at its closest point.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public Hearing on June 28, 2006.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. David and Jean Cole (applicants) seek a shoreline variance to authorize construction which has occurred at their cabin on the shores of Lake Cavanaugh.
2. The property is located at 33472 East Tree Bark Lane within a portion of Sec. 27, T33N, R6E, W.M. The shoreline designation is Rural Residential.
3. The request is to allow a 54 square-foot deck, a stairway, and an enclosed former daylight basement. The deck is as close as 11 feet from the Ordinary High Water Mark (OHWM) of the lake. The basement wall is as close as 15 feet from the OHWM.
4. In the Rural Residential environment, the standard shore setback from the OHWM is 50 feet. Thus, a variance is sought to permit the subject features to remain.
5. The construction of the deck, stairs and basement enclosure was completed by prior owners of the property. The present condition existed when the applicants bought it. They were not advised of any setback problem in connection with the purchase.
6. Much of the development of the shores of Lake Cavanaugh occurred prior to the adoption of shoreline regulations. The lakeshore was subdivided into narrow steep lots with little space for waterfront buildings. The pattern established was of structures far closer to the water than the 50-foot regulatory setback.
7. The subject lot follows the general pattern. It is bisected by East Tree Bark Lane. There is little shoreside space for development. The existing house has a footprint of only 392 square feet.
8. The enclosure of the basement did not increase the non-conformity of the basic structure. Moreover, the deck in question is located below an existing balcony deck. Only 13.5 square feet of the deck are not beneath the balcony. Setback non-conformity was increased by only this small area.
9. The very modest deck (4.5 feet wide, 12 feet long) and stairs provide a means for getting from the house to ground level and the beach. The deck is more than 30 inches above average grade.
10. The average setback of dwelling units within 300 feet of the property is 33 feet. However, the application states that there is an accessory structure on an adjacent lot located closer to the shore than the deck in question.
11. A Fish and Wildlife Habitat Site Assessment and Addendum were prepared in the fall of 2005. The report concluded that the construction of the small deck “did not degrade functional wildlife habitat within the buffer below current conditions.”

However, the planting of trees and shrubs within the shoreline buffer was recommended. The report stated that the recommended mitigation measures will more than offset the minimal impacts of the deck.

12. The applicants have improved the septic system on site and benefited water quality by placing the drainfield farther away from the lake. The improvements for which the variance is sought considerably improve the appearance of the house.

13. Variances from the Skagit County Shoreline Management Master Program for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

- a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to the adjacent properties or the shoreline environment designation.
- d. The variance granted does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.
- e. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

14. The Staff Report analyzed the application against these criteria and determined that, as conditioned, the development is 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.

15. The lot is constrained as to buildable space. The original house was essentially constructed with its waterward dimension on stilts. The living area of the house, even with the addition of the basement, is much smaller than the average residence in the County. The setback problem here was not of the applicants' making. The deck and stairs provide reasonable access to the water. Strict application of the setback standard would significantly interfere with this reasonable use of the property. The deck,

stairs and enclosed basement are compatible with other development in the area and, indeed, represent an aesthetic improvement. They are having no adverse effects on either neighboring lots or the shoreline environment.

16. There was no public comment on this application. No comments were received from consulted County Departments.

17. 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. SMP 10.02

2. Under the Shoreline Master Program (SMP) a deck as high as this one is considered part of the residence, rather than as accessory development, and is therefore subject to the 50 foot setback.

3. The Examiner concludes that the deck, stairs and enclosed basement under consideration, as conditioned herein, meet the criteria for a Shoreline Variance Permit. SMP 10.03(1).

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

### **CONDITIONS**

1. The applicants shall obtain a Skagit County Building Permit for the subject improvements within one year of final approval of this shoreline permit.

2. If any modifications to the subject development are contemplated, the applicants shall apply for a new permit or revision from Planning and Development Services prior to any construction.

3. The applicants shall comply with the recommendations of the Fish and Wildlife Habitat Site Assessment prepared by Earth Systems Science, Inc., including the monitoring measures. Within one year of building permit approval, the applicants shall contact staff and schedule a meeting on site to inspect the required plantings. Two years after the first site inspection, the applicants shall schedule a final plant inspection by staff.

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

5. The shoreline setback shall be placed in a Protected Critical Area (PCA). The applicants shall provide a drawing of the PCA, and record the same with the County Auditor pursuant to SCC 14.24.170 at the time of applying for a building permit.

6. Construction shall commence within two years of the Department of Ecology's approval and shall be completed within five years thereof or the permit shall become void.

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

### **DECISION**

The requested Shoreline Variance Permit is approved, subject to the conditions set forth above.

  
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Wick Dufford, Hearing Examiner

Date of Action: July 17, 2006

Date Transmitted to Applicants: July 17, 2006

### **RECONSIDERATION/APPEAL**

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.

### **DEPARTMENT OF ECOLOGY REVIEW**

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.