

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicants:** Ed and Alisa Van Valey  
11727 SE 264<sup>th</sup> Street  
Kent, WA 98030

**Agent:** Jackie Chriest  
33688 Bamboo Lane  
Mount Vernon, WA 98274

**File No:** PL06-0130 (shoreline)  
PL06-0128 (zoning)

**Request:** Shoreline Variance  
Road Setback Reduction

**Location:** 35060 North Shore Drive, shoreline of Lake  
Cavanaugh, within a portion of Sec 25, T33N,  
R6E, W.M. Parcels 66465, 66442.

**Land Use Designations:** Shorelines: Rural Residential  
Zoning: Rural Village Residential

**Summary of Proposal:** To replace an older existing cabin and  
deck with a new cabin and deck occupying  
a total footprint of 952 square feet. When  
an existing shed is removed, the total increase  
in site coverage will be about 70 square feet.  
The new residence is to be located 33.15 feet  
landward of the Ordinary High Water Mark  
(OHWM), considerably farther back than the  
average shore setback of neighboring homes. The  
structure will be within 12 feet of North Shore  
Drive.

**Public Hearing:** After reviewing the report of Planning and  
Development Services, the Hearing Examiner  
conducted a public hearing on March 28, 2007.

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

## **FINDINGS OF FACT**

1. Ed and Alisa Van Valey (applicants) seek permission to replace an existing cabin with a slightly larger one on the shore of Lake Cavanaugh.
2. The property is located at 35060 North Shore Drive. It is Lot 19, Block 6, of Lake Cavanaugh Subdivision 1, situated within Sec. 25, T33N, R6E., W.M. The property includes Parcels 66465 and 66442. The shoreline designation is Rural Residential. The zoning is Rural Village Residential.
3. The lot is 60.76 feet wide and extends up from the lake and across the North Shore Drive to a depth of 200 feet. The topography is steep. The slope is 36% within 200 feet of the shore and increases farther inland. There is a septic system drainfield above the road. Also north of the road is an off-street parking area. The parking does not impinge on the drainfield.
4. The property is bisected by the road. The distance to the road from the Ordinary High Water Mark (OHWM) averages 89 feet. The prior development on the property is on the lake side (south) of the road.
5. The dimensions of the new home will be 24 by 28 feet (672 square feet). The deck will be 10' by 28' (280 square feet). The total square footage of the new footprint will be 952 square feet. The new structure will replace an existing 780 square foot residence and attached deck. A shed and outhouse on the property will be removed. When the shed is subtracted, the net increase in site coverage will be only about 70 square feet.
6. The deck of the proposed new home was originally shown at 30.65 feet from the OHWM. Revised drawings now show this distance to be 33.15 feet. In final design, then, the new project will retain almost the same setback from the water as existed in the past. Moreover, the setback proposed is significantly greater than the norm for homes in the immediate vicinity. The average setback of homes within 300 feet on either side is 9.6 feet from the OHWM.
7. The current cabin is 12 feet from North Shore Drive. The replacement will be the same distance from the road.
8. The standard shore setback established by the Shoreline Master Program (SMP) is 50 feet in the Rural Residential environment. The zoning setback (Rural Residential Village) from the road is 35 feet. The combination of these setbacks consumes almost all of the buildable area on the shore side of the lot.
9. A Fish and Wildlife Habitat Assessment was prepared by Edison Engineering. The assessment noted that the increased house and deck footprint will be partially offset

by the removal of the old shed. The area where the new deck will go is currently in lawn. The report concludes that the location of the new deck will not cause additional habitat loss. The area between the structure and the lake will be placed within a Protected Critical Area (PCA).

10. A Shoreline Variance is sought from the 50-foot shore setback. Variances from the SMP 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.

11. The Staff Report analyzes the application against these criteria and determines that, as conditioned, the project 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.

12. Given the topography, the lot configuration and the placement of other developments in the immediate vicinity, to require conformity with the standard shore setback would significantly interfere with reasonably use of this particular parcel. This lot provides a greater shore setback than usual in this 1940-s era lakeside plat. The replacement structure will maintain this situation.

14. Approval of a reduction in the 35-foot setback from the road is also sought. Any reduction in this front setback would normally be processed administratively.

However, it is here combined with the shore setback application and addressed in the hearing process. A setback reduction may be granted if the public health, safety and welfare will be maintained. SCC 14.16.810(4). Public Works may be consulted regarding traffic safety.

15. Public Works had no concerns over traffic safety with the 12-foot setback from the road. Parking is on the opposite side of the street. The 12-foot setback to be provided essentially retains the existing setback situation on the street front.

16. The Examiner finds that public health, safety and welfare will be maintained if the 12-foot front setback is approved.

17. No adverse comments were received from County departments. There was no public comment, written or oral, on this proposal.

18. 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. The shore setback and the zoning setback requests were properly consolidated in this hearing process. SCC 14.06.060.

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

3. The application was properly noticed in accordance with SMP 9.04, and SCC 14.06.150

4. The shore setback for single family residential development on Rural Residential shorelines is 50 feet. SMP 7.13(2)(C), Table RD. The standard front setback for permitted uses in the Rural Village Residential zone is 35 feet. SCC 14.16.310(5)(a)(i).

5. The requested setbacks meet the relevant criteria for a Shoreline Variance and for zoning setback reduction. SMP 10.03(1), SCC 14.16.810(4).

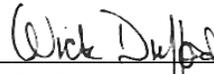
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## **CONDITIONS**

1. The project shall be constructed according to the submitted site plans, as revised on August 31, 2006. If the applicants intend any modifications to the proposal, they shall apply to Planning and Development Services for a new permit or a permit revision prior to commencing construction.
2. The project shall adhere to the recommendations of the Fish and Wildlife Habitat Assessment prepared by Edison Engineering and dated November 17, 2005.
3. The proposed Protected Critical Area shall be accurately mapped and recorded with the County Auditor prior to approval of a building permit. See SCC 14.24.170.
4. The applicants shall obtain all necessary permits and approvals, including a building permit for the new cabin.
5. No parking shall be allowed within the County right-of-way.
6. The project shall comply with all applicable provision of the Skagit County Code, including the provision of the local Shoreline Master Program.
7. The project shall be commenced with two (2) years of the date of final approval and finished within five (5) years thereof or the shoreline permit will become void.
8. The shed and outhouse must be removed from the shoreline area within one year of the final approval of the shoreline permit.
9. Failure to carry out any of these conditions may result in revocation of the permit.

## **DECISION**

The requested Shoreline Variance and zoning setback reduction are approved, subject to the conditions set forth above. The shore setback shall be no closer than 33.15 feet to the OHWM. The front setback shall be no closer than 12 feet to North Shore Drive.



Wick Dufford, Hearing Examiner

Date of Action: April 11, 2007

Date Transmitted to Applicants: April 11, 2007

## **RECONSIDERATION/APPEAL - SHORELINES**

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.

## **RECONSIDERATION/APPEAL - ZONING**

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services 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 Planning and Development Services within 14 days after the date of the 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.