

BEFORE THE SKAGIT COUNTY HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION

Applicants: Pamela Martens and Steven Cox
P. O. Box 13375
Mill Creek, WA 98082

File No: PL09-0158

Request: Shoreline Variance

Location: 35056 North Shore Drive on the shore of Lake Cavanaugh,
within SW1/4 Sec. 25, T33N, R6E, W.M.

Parcel Nos: P66464, P66441

Shoreline Designation: Rural Residential

Summary of Proposal: To demolish an existing residential structure and replace it with a new one within the existing foot print. The residence will be located 17 feet landward of the Ordinary High Water Mark (OHWM). The developed area of the site will be 38 percent.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on January 27, 2010.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Pamela Martens and Steven Cox, husband and wife, seek approval of a Shoreline Variance in order to replace an existing cabin on the shore of Lake Cavanaugh.
2. The property is located at 35056 North Shore Drive within the SW1/4, Sec. 25, T33N, R6E, W.M. Parcel numbers are P66464 and P66441. Lot certification, however, has concluded that the parcels on the north and south sides of North Shore Drive are one legal lot of record. The shoreline designation is Rural Residential.
3. On the south side of the road, the lot measures approximately 60' x 60'. This leaves very little room for lakeside residential construction. The proposal is to replace a cabin built in 1948 and occupying a footprint of approximately 1,976 square feet. The new residence will occupy a footprint of approximately 1,459 square feet. The dimensions will be roughly 38' x 38'.
4. The new residence will be set back 8 feet from the road and 17 feet from the Ordinary High Water Mark (OHWM) of the lake. These setbacks are the same as for the existing residence. The new home will have larger side setbacks than now exist. The present cabin is on the east property line and the new one will be set back 14 feet from that boundary. The present cabin is 4 feet from the west property line. The new one will be set back 8 feet from that boundary. The new residence on the sloping lot will be three stories high, but will not exceed the 30 foot height limit established by the Shoreline Master Program (SMP).
5. The subject lot was reviewed in 2005 for critical areas compliance in connection with a project for building a bulkhead. The review resulted in the recording of a Protected Critical Area (PCA) on the site requiring a 17 foot buffer from the OHWM. Since that time, some structures have been placed within the PCA, but the applicant has stated that these will be removed. The PCA site plan includes the planting of vegetation which will increase infiltration functions and improve stormwater management.
6. For the present application, the applicants submitted an addendum to the original Fish and Wildlife site assessment and a Geologically Hazardous Area site assessment. The current proposal is not likely to impose substantial new adverse impacts.
7. The project includes the construction of a 780 square-foot detached garage on the north side of North Shore Drive. The garage is proposed as a two story structure with an upstairs shop, but no bathroom facilities. It will not exceed 15 feet in height. There will be no parking on the south side of the street.
8. The existing septic system was approved for a two-bedroom home. The effluent is pumped to a drain field on the north side of the road. The system will be upgraded to support a three bedroom home with an adequate reserve area. The drainfield will be sited further up the slope to allow a buildable area for the proposed garage.

9. The location of the residence on the south side of the road is consistent with the pattern of development in the area. The shores of Lake Cavanaugh are predominantly developed with single family residences and recreational cabins built on narrow sloping lots similar to the subject property. The average setback from the OHWM of the 11 residences within 300 feet on either side of the applicants' lot is 11 feet. The applicants' new residence will not interfere with any residential views.

10. According to the applicants, building the residence on the north side of the road would be infeasible due to the cost associated with engineering and construction on a steep slope. (The slope reaches 60% above the septic reserve area.) The land available for a residence is limited and, with a home on the north side, space for a septic system would be inadequate.

11. The project also calls for improvements to the existing dock, including an extension. An existing boat lift will be moved. This work is covered by the residential dock exemption for shoreline permits, and need not be addressed in this variance request. The applicants, however, assert that the extended dock would not impact the access to any neighboring docks. Any changes to the dock will need to be approved by the Department of Fish and Wildlife.

12. The proposed house will be built into the 36% sloping hillside, requiring a foundation wall approximately 18 feet in height along the landward property line abutting North Shore Drive. The result will be varying ground heights on three sides of the residence.

13. In order to build the new home 8 feet from North Shore Drive, an administrative variance under the Zoning Code was sought and approved. A variance for the 20-foot setback of the garage across the road was also obtained.

14. Under the SMP, the regulatory residential setback from the OHWM is 50 feet. The applicants request a Shoreline Variance from this requirement to allow a 17 foot setback from the water which is the same as the setback of their existing cabin.

15. The total site development proposed will occupy 38% of the subject site. The SMP's limit for site coverage is 30%. Accordingly a Shoreline Variance from this requirement is also sought. The site coverage after completion of the proposed project will be slightly less than at present. The resulting percentage of lot coverage is similar to that present on adjacent properties.

16. Under SMP 10.03(1), Shoreline Variances for construction landward of the OHWM must meet the following criteria:

- a. The strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or significantly interferes 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 as irregular lot shape; size or natural features and the application of this Master Program and, not, for example, from deed restrictions or the applicant's own actions.
- c. 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 does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.
- e. The public interest will suffer no substantial detriment.

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

17. The Staff Report analyzes the variance requests in light of the above criteria and finds that, as conditioned, the proposal 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.

18. The proposed redevelopment of the subject property is consistent with the trend of upgrading older cabins along Lake Cavanaugh into permanent residences. The location of the house is wholly compatible with adjacent development. The development pattern was established more than 60 years ago. Many similar variances have been granted from the regulatory setbacks, dictated in large measure by the dimensions and topography of the lots. Approval of the applicants' proposal will not interfere with neighboring development. If additional requests for like actions in the area are approved, the cumulative impacts will not significantly alter the present condition from an environmental point of view. Under all the circumstances the denial of the variances sought would significantly interfere with a reasonable use of the property.

19. There was one comment letter which generally supported the project, but raised questions about the extension of the dock. The dock is not the subject of this approval. There was no public testimony at the hearing.

20. 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(3).
2. The proposals for the residence and accessories are exempt from the procedural requirements of the State Environmental Policy Act (SEPA).
3. The project, as conditioned, meets the criteria for issuance of Shoreline Variances. SMP 10.03(1).
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be constructed as described in the application materials, except as the same may be modified by these conditions.
2. The applicants shall obtain any other required permits and abide by the conditions of same. A copy of this decision shall be submitted with the building permit application.
3. The applicants shall comply with the conditions of the Administrative Variance, dated December 4, 2009 (PL09-0159).
4. The applicants and its contractors shall comply with all applicable County, State and Federal regulations and laws, including but not limited to Chapter 173-201A WAC (surface water quality), Chapter 173-200 WAC (ground water quality), Chapter 173-60 WAC (environmental noise).
5. Temporary erosion/sedimentation control measures shall be used in accordance with Chapter 14.32 SCC (drainage).
6. The applicants shall comply with Northwest Clean Air Agency requirements.
7. The applicants shall remove all structures from the PCA area, including the outdoor kitchen.
8. The applicants shall adhere to the recommendations in the Fish and Wildlife Habitat Assessment and Geologically Hazardous Areas Evaluation (and relevant addenda thereto) prepared by Advanced Environmental Solutions. Planting of native plants within the PCA, and in particular within the present terrace patio area, shall be implemented as recommended.

9. No parking shall be allowed along the southerly side of North Shore Drive adjacent to the proposed residence. All parking shall be directed to the northerly portion of the parcel adjacent to the proposed garage. No parking shall be allowed within the County right-of-way.

10. If the applicants propose any modification of the subject proposal, they shall request a new permit or permit revision from Planning and Development Services.

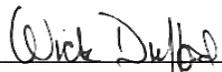
11. The project shall be commenced within two (2) years of the date of final approval of this variance and shall be completed within five (5) years thereof or the permit shall become void.

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

DECISION

The request Shoreline Variance to the shore setback and lot coverage requirements of the Master Program is approved, subject to the conditions set forth above.

DONE this 8th day of February, 2010.



Wick Dufford, Hearing Examiner

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 becomes final at the County level, the Department of Ecology must approve it or disapprove it, pursuant to RCW 90.58.140.