

9
9907140075

KATHY HILL
SKAGIT COUNTY CLERK

'99 JUL 14 P1:05

RECORDED _____ FILED _____
REQUEST F _____

AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SHORELINE SUBSTANTIAL DEVELOPMENT VARIANCE
SL 99 0174

GRANTOR(S): SKAGIT COUNTY HEARING EXAMINER

GRANTEE: DICK RAISLER

ASSESSOR PARCEL NOS: P69420

ABBREVIATED LEGAL DESCRIPTION: located on Channel Lane, within Section 13,
Township 34 North, Range 2 East, W.M., Skagit County, Washington.

9907140075

BK2019PG0396

0721 1999

0752 1999

**SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON**

In the Matter of:

Application No. SHL 99-0174 Shoreline
Substantial Development/Variance of Dick
Raisler

**FINDINGS OF FACT
ENTRY AND ORDER**
No. SHL 99-0174

This matter having come regularly before the Skagit County Hearing Examiner for a public hearing under an application filed with the Skagit County Department of Planning and Community Development by the applicants requesting a Shoreline Substantial Development/Variance as described and located in the Report and Findings of the Skagit County Department of Planning and Community Development:

And, notice having been given to all property owners within 300 feet of said property and all matters submitted at the public hearing having been considered together with the testimony, evidence and exhibits in open hearing and made a part of the record in this matter, and a site visit by the Hearing Examiner, the Hearing Examiner make the following:

FINDINGS OF FACT

1. The application has been advertised in accordance with Section 9.04 of the Skagit County Shoreline Master Program (Master Program) and WAC 173-14-070.
2. The subject proposal is located on the Swinomish Channel in an area designated as a Rural Reserve by the Skagit County Comprehensive Plan and within the Residential District under the Skagit County Zoning Ordinance. The property is designated as Rural Residential in the Skagit County Shoreline Management Master Program (SCSMMP).
3. No objections have been received regarding this proposal and no testimony against the proposal was offered at the hearing.
4. Staff determined that the subject proposal required a Site Assessment/Habitat Management Plan as required in 14.06.520 of the Skagit County Critical Areas Ordinance (CAO) which was provided on March 12, 1999. The report determined that the proposal will have little if any negative impact to the site.
5. Staff has determined that the subject proposal shall be reviewed for consistency with SMP Chapter 7.13, Residential Development. The Hearing Examiner adopts by reference the findings of the staff related to this review.

Skagit County Hearing Examiner

9907140075

Page 1

Findings and Order

BK 2019 PG 0397

972 1999

0752 1570

6. The Hearing Examiner finds that the subject request is consistent with the criteria for granting Shoreline Substantial Development Permits.

7. The Shoreline Master Program, Chapter 10 Variances, sets forth the criteria for granting Shoreline Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits reads:

Variance permits for development to be located landward of the ordinary high water mark (OHWM), except within areas designated marshes, bogs or swamps pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet all the following criteria; the burden of proof shall be on the applicant.

a. That 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.

The Hearing Examiner finds that the existing lot is divided by a neighbors' 30 foot wide access which runs literally through the lot. In order to locate the septic system more than 100 feet from the OHWM it must be placed on the section of the lot farthest away from the water thereby leaving only the waterward portion usable for a home.

b. That 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.

The Hearing Examiner finds that the hardship is specifically related to the access easement and septic requirements.

c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

The Hearing Examiner finds that the entire area has been developed for intensive rural residential use as demonstrated by the Rural Residential Shoreline designation.

d. That the variance authorized 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.

The Hearing Examiner finds that due to access and septic issues as well as the

fact that all the other homes in the area are setback at 25 feet stream buffer requirements and the existing location of adjacent homes the proposal does not constitute a special privilege.

e. That the public interest will suffer no substantial detrimental effect.

The Hearing Examiner finds that no detrimental effect has been identified.

8. The Skagit County Department of Public Works has no comment on the proposal.

CONCLUSIONS

The Hearing Examiner, having duly considered the matter and all testimony and evidence presented at the public hearing and submitted while the record was open until June 23, 1999, and there being no opposition, makes the following conclusions:

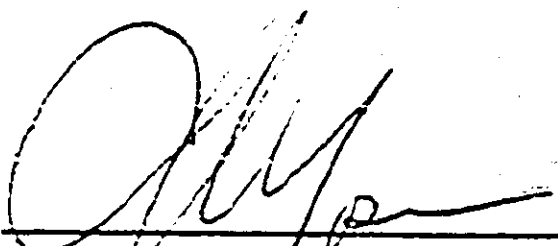
1. The provisions of the Skagit County Code identified above apply to this application.
2. The burden is on the applicant to demonstrate that the permit and variance should be granted.
3. The reasons set forth by the applicant for a variance do demonstrate that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
4. The applicant has demonstrated that the substantial development permit should be granted, with conditions.

DECISION

The Hearing Examiner **APPROVES** the application for a special use permit and shoreline substantial development/variance, subject to the following conditions:

1. All development, construction, and use of the site shall be consistent with the policies, regulations, and permit requirements of the Shoreline Management Act and the Skagit County Shoreline Master Program (whether or not specifically outlined in this staff report); and any other applicable local, state, or federal regulations and/or permit requirements.
2. All construction debris shall be properly disposed of on land in such a manner that it cannot enter in to the waterway or cause water quality degradation.

3. The project must be started within three (3) years of the date of this order and completed within (5) years of the date of this order or the shoreline permit will become void.
4. The applicant must obtain a Skagit County Building Permit and receive all the necessary approvals incorporated within the said permit.
5. The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modifications of the subject proposal, he/she shall request a permit revision from this office prior to the start of construction.
6. The applicant shall comply with S.C.C. 14.04.190(12) which list specific requirements for lots within Skagit Beach Plats 1 through 5.



C. THOMAS MOSER, PRO TEM
Skagit County Hearing Examiner

Signed July 12, 1999

1 REVIEWING AUTHORITY: Skagit County Hearing Examiner
2
3 PUBLIC HEARING DATE: June 23, 1999
4
5 APPLICATION FOR: Shoreline Substantial Development/Variance #SHL
6 99-0174
7
8 APPLICATION DATE: March 18, 1999
9
10 APPLICANT: Dick Raisler
11 14773 Avon Allen Road
12 Mount Vernon, WA 98273

13
14 PROJECT DESCRIPTION: To allow the following development. The construction of a
15 single-family residence with a 25' setback from the OHWM of Swinomish Channel. The
16 property is divided by a 30' access easement and requires a septic drain field site and
17 reserve area.

18
19 PROJECT LOCATION: The proposed project is located on Channel Lane, Swinomish
20 Channel, within a portion of Section 13, Township 34 North, Range 2 East, W.M., Skagit
21 County.

22
23 RECOMMENDATION: Approval, with conditions stated at the end of the report.
24 EXHIBITS:

- 25
26 1. Staff Report
27 2. March 18, 1999, Shoreline Substantial Development application and Critical Area
28 Review Form with a narrative, ownership certification, JARPA, fact sheet and maps.
29 3. April 1 & April 8, 1999, Notice of Development.
30 4. March 26, 1999 Letter of Completeness.
31 5. March 12, 1999 Fish & Wildlife Site assessment prepared by BEK Purnell.

32
33 STAFF FINDINGS:

- 34
35 1. The application has been advertised in accordance with Section 9.04 of the Skagit
36 County Shoreline Master Program (SMP) and WAC 173-14-070.
37
38 2. The subject proposal is located on the Swinomish Channel in an area designated
39 as a Rural Reserve by the Skagit County Comprehensive Plan and within the
40 Residential District under the Skagit County Zoning Ordinance. The property is
41 designated as Rural Residential in the Skagit County Shoreline Management
42 Master Program (SCSMMP).
43
44 3. No objections have been received regarding this proposal.
45
46 4. Staff determined that the subject proposal required a Site Assessment/Habitat
47 Management Plan as required in 14.06.520 of the Skagit County Critical Areas

9907140075

BK2019P60401

1 Variance permits for development to be located landward of the ordinary high
2 water mark (OHWM), except within areas designated marshes, bogs or swamps
3 pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet
4 all the following criteria; the burden of proof shall be on the applicant.
5

6 a. That the strict application of the bulk, dimensional or performance
7 standards set forth in this Master Program precludes or significantly
8 interferes with a reasonable use of the property not otherwise
9 prohibited by this Master Program. *The existing lot is divided by a
10 neighbors 30 foot wide access which runs literally through the lot. In order
11 to locate the septic system more than 100 feet from the OHWM it must be
12 placed on the section of the lot farthest away from the water thereby leaving
13 only the waterward portion usable for a home.*
14

15 b. That the hardship described above is specifically related to the
16 property and is the result of unique conditions such as irregular lot
17 shape, size or natural features and the application of this Master
18 Program and not, for example, from deed restrictions or the applicant's
19 own actions. *The hardship is specifically related to the access easement
20 and septic requirements.*
21

22 c. That the design of the project will be compatible with other permitted
23 activities in the area and will not cause adverse effects to adjacent
24 properties or the shoreline environment designation. *The entire area has
25 been developed for intensive rural residential use as demonstrated by the
26 Rural Residential Shoreline designation.*
27

28 d. That the variance authorized does not constitute a grant of special
29 privilege not enjoyed by the other properties in the same area and will
30 be the minimum necessary to afford relief. *Due to access and septic
31 issues as well as the fact that all the other homes in the area are setback at
32 25 feet stream buffer requirements and the existing location of adjacent
33 homes the proposal does not constitute a special privilege.*
34

35
36 e. That the public interest will suffer no substantial detrimental effect. No
37 detrimental effect has been identified.
38

39 9. The Skagit County Department of Public Works has no comment on the proposal.
40
41
42
43
44
45
46

BK2019PG0403

9907140075

1 RECOMMENDATION

2
3 Based on the above findings, the Skagit County Planning and Permit Center would
4 recommend for approval of a Shoreline Substantial Development Permit subject to the
5 following conditions:
6

- 7 1. All development, construction, and use of the site shall be consistent with the
8 policies, regulations, and permit requirements of the Shoreline Management Act
9 and the Skagit County Shoreline Master Program (whether or not specifically
10 outlined in this staff report); and any other applicable local, state, or federal
11 regulations and/or permit requirements.
12
- 13 2. All construction debris shall be properly disposed of on land in such a manner that it
14 cannot enter in to the waterway or cause water quality degradation.
15
- 16 3. The project must be started within two (3) years of the date of this order and
17 completed within (5) years of the date of this order or the shoreline permit will
18 become void.
19
- 20 4. The applicant must obtain a Skagit County Building Permit and receive all the
21 necessary approvals incorporated within the said permit.
22
- 23 5. The applicant shall strictly adhere to the project information (site diagram) submitted
24 for this proposal. If the applicant proposes any modifications of the subject proposal,
25 he/she shall request a permit revision from this office prior to the start of
26 construction.
27
- 28 6. The applicant shall comply with S.C.C. 14.04.190(12) which list specific
29 requirements for lots within Skagit Beach Plats 1 through 5.
30

31
32 Prepared By: DD
33 Approved By:
34 Date: June 22, 1999

9907140075

BK2019PG0404 4

1 Ordinance (CAO) which was provided on March 12, 1999. The report determined
2 that the proposal will have little if any negative impact to the site.

- 3
4 5. Staff has determined that the subject proposal shall be reviewed for consistency
5 with SMP Chapter 7.13 Residential Development.

6
7 5.13 (B) Single Family Residences

8 Although single family residences are exempt from shoreline permit procedure
9 (RCW 90.58.030 (3-e-vi)), the county, for the benefit of the lot owner, adjacent
10 properties, and other shoreline and water body users, should review all proposals
11 for construction to determine if:

- 12 (1) The proposal is or is not exempt from permit procedures

13 *This proposal is not exempt because of the reduced setback requests on*
14 *the shoreline.*

- 15 (2) The proposal is suitably located and designed and that all potential
16 adverse impacts to the shoreline and water bodies have been
17 recognized and mitigated.

18 *The Fish & Wildlife site assessment identified potential impacts which*
19 *were found to be negligible. The consultant has recommended that certain*
20 *actions be taken which will be incorporated into approval of the permit.*

21
22 7.13 (C) Location

- 23 (1) Existing and designated areas - New substantial developments should locate in
24 existing developed areas or in officially designated residential areas providing
25 development in these areas is consistent with this program.

26 *The area has been developed over many years and the lot under review is one of*
27 *the last remaining non/built lots.*

- 28
29 (2) Geohydraulics - Residential development should be located:

- 30 a. so as not to interfere with geohydraulic processes.
31 b. Inland from feeder bluffs, drift sectors, and accretion shore forms.
32 c. To avoid or minimize the need for shore defense, stabilization, and flood
33 protection works.
34 d. To utilize and protect the integrity of the shore resources for the benefit of
35 present and future residents and users.

36 *The current proposal will not require shoreline stabilization or flood protection*
37 *works.*

- 38
39 6. The Skagit County Planning and Permit Center has determined that the subject
40 request is consistent with the criteria for granting Shoreline Substantial Development
41 Permits.

- 42
43 7. Master Program, Chapter 10 Variances, sets forth the criteria for granting Shoreline
44 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits
45 reads: