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Kathy Hill, Skagit County Auditor

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

DOCUMENT TITLE: ORDER ON CRITICAL AREAS VARIANCE CV 99 0394

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: M. DARLENE MALOY

ASSESSOR PARCEL NO: P68690

ABBREVIATED LEGAL DESCRIPTION: located at Lot 14, Samish River Park, within the
NE ¼ of Section 7, Township 35 North, Range 4 East, W.M., Skagit County,
Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of)	
Application of M. Darlene Maloy)	No. CV 99-0394
For a Critical Area Variance to Allow)	
Construction of a Single Family)	Findings of Fact,
Residence within the 200 foot Riparian)	Conclusions of Law
Buffer of the Samish River)	And Order
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THIS MATTER, an application for a Critical Area Variance, came on regularly before the Skagit County Hearing Examiner in a public hearing on November 10, 1999. The Skagit County Planning and Permit Center, by Dan Cox, presented its Staff Report. Oscar Graham, Consultant, appeared for the applicant. Members of the public were given an opportunity to be heard.

Testimony was taken, exhibits were admitted and argument was made. On the basis thereof, the following is entered:

FINDINGS OF FACT

1. M. Darlene Maloy (applicant) seeks a variance in order to build a home within the riparian buffer of the Samish River. The site is located off of Steelhead Lane at Lot 14 of Samish River Park, within a portion of the NE1/4, Sec. 7, T35N, R4E, W.M. The lot comprises approximately 0.40 acre and averages approximately 192 feet in depth. It is 100 feet in width.
2. The proposed home would be located approximately 72 feet from the ordinary high water mark (OHWM) of the river, which forms the western edge of the parcel. These are Type I waters (WAC 222-16-030) and, therefore, within a Fish and Wildlife Conservation Area (SCC 14.06.040(29)(f)). The applicable riparian buffer on the lot is 200 feet from the OHWM (SCC 14.06.530(2)).
3. The Staff Report accurately describes the project, the setting and the criteria for approval. The Examiner adopts Findings 1 through 13 as presented in that Report, a copy of which is attached to this document.
4. Decreasing buffer widths is allowed under SCC 14.06.530(2)(b), provided that the buffer is not reduced below 50 percent of the standard buffer width, and provided that the following criteria are met:



- (i) Buffering width averaging . . . is not possible due to site characteristic; and
- (ii) A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and
- (iii) Decreasing width will not adversely affect the fish and wildlife habitat functions and values; and
- (iv) If a portion of the buffer is to be reduced, the remainder of the buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening/or barrier fencing and to provide adequate protection for fish and wildlife habitat functions and values.

5. The Professional Site Assessment for herein, prepared by Graham-Bunting & Associates demonstrates compliance with these four criteria. Since the average depth of the lot is 192 feet it is impossible to build a home that complies with the 200 foot buffer requirement. The proposed 72 foot setback is the required shoreline setback. Building at this depth will accommodate the house and the accompanying on-site sewage disposal system. The only functional riparian vegetation on the property is adjacent to the channel. The mitigation proposal calls for retention of all trees and the introduction of native plants to enhance the buffer. These plants will replace an existing stand of blackberries.

6. Thus, reduction of the buffer to 100 feet (50 percent), can be accomplished under the terms of the Ordinance. However, further reduction requires a variance. The variance sought here involves a further setback reduction of 28 feet.

7. SCC 14.06.100 sets forth the following criteria for approval of a Critical Areas Ordinance variance:

- a. That 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.
- b. The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.
- c. That 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 this chapter to other lands, structures or buildings under similar circumstances.



8. The Staff's analysis applying these criteria to the instant application is set forth in the Staff Report under Finding 12 therein. The Examiner concurs in and adopts that analysis. The subdivision involved here was established for residential development years before the Critical Areas Ordinance was adopted. This is the one of two properties out 30 that remains to be developed. The setback proposed for the subject property more closely approaches compliance with current setbacks that does much of the pre-existing pattern of development there.

9. The granting of a variance in this case will be consistent with the general purpose and intent of the Critical Areas Ordinance. The presence of the Samish River, associated floodway and location of the proposed septic system preclude a setback greater than 72 feet from the OHWM. The variance sought is the minimum that will make possible reasonable residential use of the property.

10. The reasons set forth in the application justify the granting of the variance. Construction consistent with the variance, as conditioned, will not create significant affects on the associated critical area or otherwise be detrimental to the public welfare.

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

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over the parties and the subject matter of this proceeding.

2. The 72 foot buffer proposed will meet the approval criteria set forth in SCC 14.06.530(2)(b) and 14.06.100, if the following conditions are imposed and complied with:

1. The applicant shall obtain all applicable permit approvals for the development of this property, including, but not limited to, building, septic, floodplain development, access and address, and shoreline substantial development approval.

2. The mitigation measures outlined in the "Professional Site Assessment" herein shall be deemed conditions of approval and implemented upon site development. These are:

A. Existing native vegetation including alder and willow near the OHWM shall be retained.

B. The invasive stand of blackberry shall be removed and controlled annually in order to allow for installation of tree and understory species, such as Western red cedar, Indian plum, elderberry, red osier dogwood, or other native species.

C. Monitoring shall be conducted to assure plant success. Replacement of failed plantings shall be provided for over a two-year period.

D. Any hazard trees proposed for removal shall be approved by the Skagit County Planning and Permit Center prior to removal consistent with the provisions of SCC 14.06.530(2)(e).

E. The area between the residence and OHWM shall be designated as a Protected Critical Area, depicted on an approved site plan and recorded with the Skagit County Auditor. The submitted site plan is in a format suitable for recording.

F. Low intensity and non-extractive residential accessory uses shall be allowed within the PCA consistent with the applicable shoreline setback requirements.

3. The applicant shall comply with the provisions of the Flood Damage Prevention Ordinance, Chapter 15.20 SCC. Portions of the lot proposed for residential development are in the 100 year floodplain and are regulated as Zone A3 floodplain (Flood Insurance Rate Map, Skagit County, WA. Community Panel Number 530151 0045C, Effective January 3, 1985) SCC 14.06.600 regulates Frequently Flooded Areas. The mitigation standards contained in SCC 14.06.630(1) state "All development shall conform to the provisions of the Flood Damage Prevention Ordinance, Chapter 15.20 SCC, and the Uniform Building Code, which contain structural safeguards to reduce risk to human life, health and property from flooding."

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

DECISION

The variance is APPROVED, subject to the conditions set forth in Conclusion 2 above.


Wick Dufford, Hearing Examiner

Date of Action: December 2, 1999

Copies transmitted to Applicant: December 2, 1999



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RECONSIDERATION/APPEAL

This decision shall become final unless a request for reconsideration or appeal is filed. A request for reconsideration shall be filed with the Hearing Examiner within ten (10) days from the date of this decision. An appeal shall be filed with the Board of County Commissioners within fourteen (14) days from the date of this decision, or if reconsideration has been requested, within fourteen (14) day from the decision after reconsideration.

