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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 SHORELINE VARIANCE APPLICATION SL 00 0139

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: JAMES AND MARY JO STROH

ASSESSOR PARCEL NO: P68039

ABBREVIATED LEGAL DESCRIPTION: located on Guemes Island at 5064 Potlatch Lane,
Anacortes, WA; within Section 35, Township 36 North, Range 1 East, W.M., Skagit
County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
JAMES AND MARY JO STROH)	SL 00-0139
)	
For a Shoreline Variance Permit)	Findings of Fact,
To Remodel an Existing Single)	Conclusions of Law
Family Residence within the Shore)	And Decision
Setback, at 5064 Potlatch Lane on the)	
Bellingham Channel, Guemes Island)	
)	

THIS MATTER, an application for a shoreline approval, came on regularly for hearing on May 31, 2000, after due notice. The Planning and Permit Center was represented by Daniel Downs. The applicants were represented by Elvin Baylis, Architect. 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. James and Mary Jo Stroh (applicants) seek to remodel an existing single family residence that is 80.5 feet from the Ordinary High Water Mark (OHWM).
2. The project is located a 5064 Potlatch Lane on the west side of Guemes Island, adjacent to the Bellingham Channel, within a portion of Sec 35, T36N, R1E, W.M. The property is designated Rural Residential under the Shoreline Master Program (SMP).
3. The SMP provides that the shore setback for residences be determined by averaging the distances from the shore of neighboring residences within 300 feet on both sides. SMP 7.13(2)(c), Table RD. Here there is a home on one side much closer to the shore than the subject house, and on the other side there is home much farther away from the shore. In this situation, the calculated shore setback for the applicants' property is 110.4 feet.
4. The existing house is a legal nonconforming structure because of its intrusion into the setback. It could continue as is indefinitely. But the proposed remodel will be an enlargement and therefore must, under the SMP, be treated like a new development. See SMP 12.02. Single family residences for occupancy by the owners are exempt from shoreline development permits, but a variance must be obtained to authorize placement of such a structure within a setback. The proposed remodel calls for maintaining the same shore setback as the existing house.



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5. In addition to the variance, the enlargement of a non-conforming use requires a determination by the Examiner that the change can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment, and that to deny the change would constitute a greater hardship than the public benefit that would be derived from its denial. SMP 12.04.

6. The existing home, faces west toward the water and is only 1300 square feet in size. The remodel will add: a) a 10' x 24' addition on the ground floor at the northwest corner of the house that will run parallel with the existing foundation line; b) a 15' x 17' ground floor addition on the southeast corner of the existing structure; c) an new second story floor with a total area of 600 square feet. The remodel will increase the size of the kitchen, baths, and sleeping rooms by approximately 1,000 square feet. Only about 450 square feet will be added to the ground floor footprint.

7. The 75 foot area from the shore landward has extensive established native flora, including wild rose, salal, potentilla and beach grass. In the remodel project, none of this will be removed. A Fish and Wildlife Site Assessment/Habitat Management Plan prepared for the project identified no or little impact if appropriate erosion control measures are taken during construction. The report recommended the recording of a Protected Critical Area, the planting of beach grass adjacent to the bulkhead and the addition of plants as depicted on a mitigation site plan accompanying the report.

8. For development landward of the OHWM, the criteria for approval of a variance are set forth at SMP 10.03(1). The applicant must prove:

- 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.
- 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.
- 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.
- d. That the variance 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. That the public interest will suffer no substantial detrimental effect.



In the granting of variance permits, the cumulative impact of additional requests for like in the area is to be considered.

9. The Staff Report analyzes the project in light of these criteria and concludes that the project will meet them. The Examiner concurs in this analysis and adopts the same.

10. The existing home is in an area where many older cabins have been converted into full-time residences. There are a number of these which are closer to the shore than the applicants' house. The setback of the remodeled house will be consistent with the general pattern of setbacks in the neighborhood. The remodeled house will be compatible in size and appearance with adjacent homes. The resulting structure will obstruct no views. Neighbors on either side endorse the project.

11. The placement of the house on the lot is dictated by the topography and by existing improvements, such as the garage, septic tank, concrete slab driveway, and rock retaining wall. Under the circumstances, the removal of the existing house and its replacement at a 110 foot setback line would involve greater environmental destruction than the present proposal.

12. There is no record of concern or objection to this proposal in the file.

13. 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 parties and the subject matter of this proceeding.

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

3. Residential development is a permitted use in the Rural Residential designation. SMP 7.13. The proposed development does not conflict with the policies of either the Shoreline Management Act or of the SMP.

4. The Examiner concludes that enlargement of the applicants' house can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment.

5. The findings above support a conclusion that, as conditioned, the project will meet the criteria for approval for a shoreline variance.

6. The following conditions should be imposed.



(1) A Protected Critical Area, approved by the Planning and Permit Center, shall be depicted on a site plan and said approved plan shall be recorded as a PCA with the County Auditor prior to the issuance of a building permit.

(2) The program of plantings recommended in the Fish and Wildlife Site Assessment of Rupert P. Schmitt, dated March 23, 2000, will be carried out.

(3) The applicants must obtain a Skagit County Building Permit and all other necessary approvals.

(4) The applicants shall strictly adhere to the project information (site diagram) submitted for this proposal. If any modifications of the proposal are proposed, the applicants must contact the Planning and Permit Center and obtain a permit revision or other appropriate approval.

(5) Proper erosion and sedimentation control shall be maintained during construction. The applicants shall comply with the above-referenced Fish and Wildlife Site Assessment in regard to these matters.

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

DECISION

The requested shoreline variance is granted, subject to the conditions set forth in Conclusion 6 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: July 18, 2000

Copies Transmitted to Applicant: July 18, 2000

Attachment: Staff Report



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2
3 **SKAGIT COUNTY PLANNING & PERMIT CENTER**
4

5 **FINDINGS OF FACT**
6

7
8 REVIEWING AUTHORITY: Skagit County Hearing Examiner
9
10 PUBLIC HEARING DATE: May 31, 2000
11
12 APPLICATION FOR: Shoreline Substantial Development/Variance #PL 00-
13 0139.
14
15 APPLICATION DATE: March 6, 2000
16
17 APPLICANT: James and Mary Jo Stroh
18 225 4th Avenue A203
19 P# 68039 Kirkland, WA 98033
20
21

22 PROJECT DESCRIPTION: The remodeling of an existing single family residence that is
23 located 80 feet from the OHWM. The remodel includes the following additions: 1) A 10'
24 X 24' addition on the ground floor at the northwest corner of the house that will run
25 parallel with the existing foundation line. 2) A 15' X 17' ground floor addition on the
26 southeast corner of the existing structure. 3) A new second story floor with a total area of
27 600 square feet.
28

29 The proposal triggers the need for a shoreline variance for the following reasons:

- 30 1. The residence is set back at 80.5 feet from the OHWM. Although no further
31 expansion shoreward is proposed, the SCSMMP 7.13(2)© Table RD* requires
32 shoreline setbacks for residences to be determined by averaging the distances of
33 neighboring residences within 300 feet of both side property lines. The average
34 setback distance for neighboring residences is 110.4 feet; therefore, the proposed
35 additions require a variance from the shoreline setbacks specific to the project
36 property.
37

38 PROJECT LOCATION: The proposed project is located at 5064 Potlatch Lane,
39 Bellingham Channel, within a portion of Section 35, Township 36 North, Range 1 East,
40 W.M., Skagit County. The subject proposal is located on the shoreline of Bellingham
41 Channel designated Rural Residential under the Shoreline Master Program.
42
43

44 RECOMMENDATION: **Approval**, with conditions stated at the end of the report.

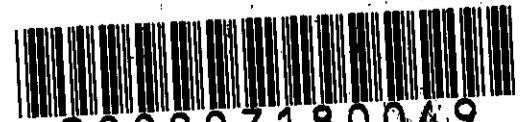
45 EXHIBITS:
46



- 1 1. Staff Report
- 2 2. March 6, 2000, Shoreline Variance application, a narrative, ownership certification
- 3 and photos.
- 4 3. April 6 & April 14, Notice of Development Application.
- 5 4. March 31, 2000 Fish & Wildlife Site Assessment prepared by Rupert Schmitt.
- 6 5. February 21, 2000 letter of support from Fred Repass.
- 7 6. February 24, 2000 letter of support from Jacqueline Bohn.
- 8

9 STAFF FINDINGS:

- 10
- 11 1. The application has been advertised in accordance with Section 9.04 of the Skagit
- 12 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
- 13
- 14 2. The subject proposal is located on the shoreline of a property with a single-family
- 15 residence on Bellingham Channel in an area designated as a Rural Intermediate by
- 16 the Skagit County Comprehensive Plan and within the Residential District under
- 17 the Skagit County Zoning Ordinance. The property is designated as Rural
- 18 Residential in the SCSMMP. The residence is a pre-existing nonconforming
- 19 structure due to the average of adjacent residences total of 110.4 feet as defined in
- 20 SCSMMP 12.02. Such structures are not allowed to expand without a
- 21 determination by the Skagit County Hearing Examiner per SCSMMP 12.04 that
- 22 the enlargement will not be accomplished without appreciable threat to the health,
- 23 safety, welfare of the public or the shoreline environment or that expansion of the
- 24 non-conformity would constitute greater hardship greater than the public benefit
- 25 derived from denial of the non-conformity.
- 26
- 27 3. Staff determined that the subject proposal required a Fish & Wildlife Site
- 28 Assessment/Habitat Management Plan as required in 14.06.510 & 520 of the
- 29 Skagit County Critical Areas Ordinance (CAO). This report was prepared by
- 30 Rupert Schmitt and dated March 23, 2000. The report identified no or little
- 31 impact if appropriate erosion control measures were taken during construction.
- 32 The report recommended the recording of a Protected Critical Area, the planting
- 33 of beach grass adjacent to the bulkhead, and the addition of numerous plants as
- 34 depicted on the mitigation site plan submitted in the report prepared by Rupert
- 35 Schmitt.
- 36
- 37 Staff determined that a Protected Critical area (PCA) and mitigation site plan will
- 38 need to be recorded with the County Auditors office for the property waterward of
- 39 the existing residence allowing this area to remain in its natural state in
- 40 accordance with SCC 14.06.145
- 41
- 42 4. The proposal is categorically exempt from the State Environmental Policy Act
- 43 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.
- 44
- 45 5. Two letters of support regarding the proposal have been submitted.
- 46



1 6. A Critical Areas Technical Team comment period was made available from April
2 11 – April 21, 2000. No comments were received.
3

4 7. Staff determined that the proposal is not located on a Shoreline of Statewide
5 Significance.
6

7 8. WAC 173-27-040(2) lists activities that do not require substantial development
8 permits including 173-270-040(2)(g), which addresses construction of a single-
9 family residences. Staff determined that this exemption is applicable to the
10 proposal and does not constitute substantial development
11

12 9. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline
13 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits
14 reads:
15

16 Variance permits for development to be located landward of the ordinary high
17 water mark (OHWM), except within areas designated marshes, bogs or swamps
18 pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet
19 all the following criteria; the burden of proof shall be on the applicant.
20

21 a. **That the strict application of the bulk, dimensional or performance**
22 **standards set forth in this Master Program precludes or significantly**
23 **interferes with a reasonable use of the property not otherwise**
24 **prohibited by this Master Program.**

25 *The existing home is only 1,300 square feet in size in an area where many*
26 *cabins have been converted into full-time single-family residences. An*
27 *addition on the northwest corner of the house would not encroach any*
28 *closer to the shoreline than the existing southwest corner of the structure.*
29 *Expansion to the east (landward) of the existing residence is limited to the*
30 *southeast corner due to topography, a retaining wall, driveway access and*
31 *the drain field. Expansion to the south is limited by the existing septic tank*
32 *and the side property setback requirement of 8 feet. Expansion to the*
33 *north is also limited without requiring a further variance for*
34 *encroachment on the side property line.*
35

36 b. **That the hardship described above is specifically related to the**
37 **property and is the result of unique conditions such as irregular lot**
38 **shape, size or natural features and the application of this Master**
39 **Program and not, for example, from deed restrictions or the applicant's**
40 **own actions.**

41 *The hardship is due to the initial placement of the residence prior to the*
42 *adoption of the Shoreline Management Act and the subsequent limitations*
43 *such as topography, the need for access, a retaining wall, and a drain field.*
44



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

4 *The entire area has been developed for rural residential use as*
5 *demonstrated by the Residential zoning designation. The proposal to*
6 *increase the square footage of the existing home on the ground and second*
7 *story are both compatible with adjacent homes that have larger living areas*
8 *and second stories. No major potential adverse shoreline environmental*
9 *effects were identified through the Critical Areas review process and no*
10 *potential adverse effects have been identified to adjacent property owners.*

- 11
12
13 d. **That the variance authorized does not constitute a grant of special**
14 **privilege not enjoyed by the other properties in the same area and will**
15 **be the minimum necessary to afford relief.**

16 *Staff does not consider such small improvements to an existing residence*
17 *that are not any closer to the shoreline, a granting of special privilege.*

- 18
19
20 e. **That the public interest will suffer no substantial detrimental effect.**

21 *No detrimental effect to the public welfare has been identified.*

22
23 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**

24
25 Staff determined that the subject proposal shall be reviewed for consistency with SMP
26 Chapter 7.13 Residential Development as defined in Chapter 3.03. The entire chapter
27 7.13 of the SCSMMP regarding Residential Development is included as Attachment "A"
28 of the staff report while staff has summarized the policies involved.

29
30 Staff determined that the proposal does not conflict with the **general policies** regarding
31 residential development, coordination, optimum use, joint use, public access, public use,
32 natural resource processes, hazardous areas, water quality & quantity, PUD's, floating
33 homes, community services, Shoreline Management jurisdiction, location and design and
34 construction and impacts.

35
36 Staff has further determined that the proposal complies with all SCSMMP **regulations**
37 regarding shoreline designation, general regulations, accessory uses, hazardous areas,
38 shore defense works, landfilling, public access, fragile areas, utilities, roads and parking
39 areas, drainage, sewage and screening **except** shoreline setbacks.

40 The following inserts from the Regulation section are considered below with staff notes
41 in italics:

42
43 **2. REGULATIONS**

44 **A. Shoreline Area**

45 **(2) Rural Residential**

46 Residential development is permitted subject to the General and Tabular Regulations.



1 (9) Shoreline setback;

2 Residential structures shall be setback common to the average of setbacks for existing
3 dwelling units within 300 feet of side property lines or a minimum setback distance as
4 Required in Table RD, whichever is greater.

5
6 *The average distance of adjacent parcels to the OHWM is 110.4 feet and the minimum*
7 *setback is 50 feet from the OHWM in the Rural Residential shoreline designation,*
8 *therefore, the "whichever is greater" in this case would be the 110.4 average setback of*
9 *adjacent properties required in Table RD. Therefore the total variance sought from the*
10 *OHWM for the additions is 30.5 feet from the OHWM.*

11
12 RECOMMENDATION

13
14 Based on the above findings, the Skagit County Planning and Permit Center would
15 recommend for **approval** of a Shoreline Variance Permit to vary from the average
16 residential adjacent property setbacks of 110 feet to 80.5 feet subject to the following
17 conditions:

- 18
19
- 20 1. The applicant shall record the site plan prepared by Rupert Schmitt and dated
21 March, 2000 showing the lot in question, clearly marking the land waterward of
22 the proposed structure as a Protected Critical Area. This shall show the types and
23 location of native vegetation to be planted. The Mitigation Plan submitted by the
24 applicant must be received by County Auditors (SCC 14.06.145(2)-office prior to
25 issuance of a building permit.
 - 26
27 2. The applicant must obtain a Skagit County Building Permit and receive all the
28 necessary approvals.
 - 29
30 3. The subject proposal shall comply with the Skagit County Shorelines Management
31 Master Program and the Shoreline Management Act RCW 90.58.
 - 32
33 4. The applicant shall strictly adhere to the project information (site diagram) submitted
34 for this proposal. If the applicant proposes any modifications of the subject proposal,
35 he/she shall request a shoreline permit revision from this office prior to the start of
36 construction.
 - 37
38 5. The applicant shall comply with the Fish & Wildlife Site Assessment
39 recommendations in regards to utilizing proper sedimentation and erosion control
40 measures during construction (see attached).
 - 41
42
43

44 Prepared By: DD

45 Approved By:

46 Date: May 15, 2000



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