



200008160052

Kathy Hill, Skagit County Auditor

8/16/2000 Page 1 of 11 12:16:47PM

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

DOCUMENT TITLE: ORDER ON SHORELINE VARIANCE SL 00 0155

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: JOHN and CAROLYN HENRY

ASSESSOR PARCEL NO: p66871

ABBREVIATED LEGAL DESCRIPTION: located at 33070 Deer Park Lane, Mount Vernon, WA; within Section 22 Township 33 North, Range 6 East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
JOHN AND CAROLYN HENRY)	SL 00-0155
)	
For a Shoreline Variance Permit to Add)	Findings of Fact,
a Second Story to an Existing Residence)	Conclusions of Law
And to Replace an Existing Deck, at)	And Decision
33070 Deer Park Lane, Lake Cavanaugh)	
)	

THIS MATTER, an application for a shoreline approval, came on regularly for hearing on June 28, 2000, after due notice. Daniel Downs appeared for the Planning and Permit Center. The applicants were represented by Brad Furlong, Attorney at Law. Members of the public were given an opportunity to be heard.

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

FINDINGS OF FACT

1. John and Carolyn Henry (applicants) seek to remodel their existing one-story cabin with daylight basement, on the north shore of Lake Cavanaugh.
2. The site is at 33070 Deer Park Lane, within a portion of Sec. 22, T33N, R6E, W.M. The parcel is within an area designated as a Rural Village by the Comprehensive Plan. The shoreline designation is Rural.
3. The proposal is to remove the deck and roof on the cabin, remodel the ground floor, replace the deck and add a second story. The existing structure has 685 square feet of living space. The second floor addition would contain an additional 670 square feet.
4. The resulting height above average grade would be 28.5 feet. The building footprint would not change -- meaning that the house would remain within 13 feet of the Ordinary High Water Mark (OHWM). The deck currently varies between 0 and 10 feet from the OHWM. The setback for the replacement deck would be the same.
5. The Shoreline Master Program (SMP) requires a 50 foot setback from the OHWM. SMP 7.13(2)(c), Table RD. The existing structure is a lawful pre-existing non-conforming use. The existing structure could continue without change indefinitely, but the proposed remodel will be an enlargement and therefore must be treated like a new development. See SMP 12.02. A variance is needed to authorize the placement of the enlarged structure within the setback.



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

7. Although increasing square footage within the existing footprint, the project would include only two bedrooms and therefore remain within the capacity design of the existing septic system.

8. The lot is narrow and pie-shaped, measuring only 38.7 feet wide at the landward end. It also slopes upward steeply from the shore. The uppermost portion is occupied by the drainfield and sand filter. Further downhill is a rockery, driveway and parking area. The house is on the hillside below the driveway, It occupies the only space available on the lot, consistent with the pre-existing infrastructure.

9. The properties in the immediate vicinity exhibit dense residential development. The neighboring houses, in general, exceed the applicants' existing cabin in height and size. The proposed additions would make the applicants' home more comparable to their neighbors' homes.

10. Because of the structure's downslope location, the extra height of the proposed addition would not interfere with any existing residential views.

11. The average shore setback of homes within 300 feet of the subject parcel's side property lines is less than 50 feet. The intrusion of the applicants' home into this setback is not incompatible with the surrounding development. The project will merely preserves the setback status quo. The neighbors on both sides endorse the applicants' proposal.

12. 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.

13. 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.

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

15. Allowing the variance here will change nothing insofar as the residential setback on this property is concerned. However, to try to relocate the residence further inland on the property would be highly disruptive of both existing development and existing natural environmental features. It would necessitate the removal of a number of mature trees and disturb a steep slope with possible erosive effects. No public benefit from such action is apparent.

16. 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. The proposal is exempt from the Critical Areas Ordinance. SCC 14.06.090(5).

4. Residential development is a permitted use in the Rural shoreline designation. SMP 7.13(2). The proposed development does not conflict with the policies of either the Shoreline Management Act or the SMP.

5. The Examiner concludes that the enlargement of the applicants' house can be accomplished without appreciable threat to the health, safety and general welfare of the public or to the shoreline environment. The hardship from denial of the proposed enlargement would outweigh any public benefit from such denial.



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

7. The following conditions should be imposed:

(1) During construction, clearing, grading and soil disturbance shall be limited to the area needed for the project.

(2) Construction material and other debris shall not be allowed to enter the lake.

(3) Appropriate erosion control measures, such as straw bales and silt fencing, shall be used during construction to prevent surface run off from disturbed soils from entering the water.

(4) The applicants shall obtain all other necessary approvals, including a County Building Permit.

(5) The applicants shall strictly adhere to the project information (site diagram) submitted for this proposal. If any modification to the project is proposed, a permit revision shall be sought from the Planning and Permit Center.

(6) Approval from the Department of Ecology shall be obtained.

8. 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 7 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: August 11, 2000

Copies Transmitted to Applicants: August 11, 2000

Attachment: Staff Report



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 five (5) days from the date of this decision. An appeal to the Board of County Commissioners shall be filed with the Planning and Permit Center within five (5) days from the date of this decision, or if reconsideration has been requested, within five (5) days from the decision after reconsideration.

1
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: June 28, 2000

11
12 APPLICATION FOR: Shoreline Variance #PL 00-0155

13
14 APPLICATION DATE: March 15, 2000

15
16 APPLICANT: John & Carolyn Henry
17 2003 Daly Street

18 PARCEL# 66871 Edmonds, WA 98020

19
20 PROJECT DESCRIPTION: The construction of a second story to an existing residence
21 and replacement of the existing deck. The deck to be replaced varies from 0-10 feet from
22 the OHWM and the existing lower floor is located 13 feet landward of the OHWM. The
23 maximum height above average grade will not exceed 30 feet therefore not requiring a
24 variance for height.

25
26 The proposal triggers the need for a shoreline variance because:

- 27 1. The applicant proposes to construct a second story top an existing cabin situated 13
28 feet landward of the OHWM in a location that requires a 50 setback per (SCSMMP
29 7.13(2)© Table RD). In addition, the applicant proposes to replace the current cabin's
30 deck which currently varies from 0-10 feet and would also require a 50 foot setback
31 per (SCSMMP 7.13(2)© Table RD).
32 2. The existing structure is pre-existing and nonconforming due to its close proximity to
33 the shore. In order to expand the structure, the Hearing Examiner is required to
34 determine whether the proposal can be accomplished without appreciable threat to the
35 shoreline environment or the public (SCSMMP 12.04).

36
37 PROJECT LOCATION: The proposed project is located at 33070 Deer Park Lane, Lake
38 Cavanaugh, within a portion of Section 22, Township 33 North, Range 6 East, W.M.,
39 Skagit County.

40
41 RECOMMENDATION: **Approval**, with conditions stated at the end of the report.

42 EXHIBITS:

- 43
44 1. Staff report
45 2. January 20, 2000, Shoreline Variance application, a narrative, ownership
46 certification and photos.



200008160052

Kathy Hill, Skagit County Auditor

8/16/2000 Page 7 of 11 12:16:47PM

- 1 3. April 20, 2000 & April 27, 2000, Notice of Development Application.
- 2 4. April 4, 2000 letter from Bradford Furlong (applicant representative) to Daniel
- 3 Downs.
- 4 5. June 2, 2000 letter from Bradford Furlong to Daniel Downs.
- 5
- 6
- 7
- 8
- 9
- 10

11 STAFF FINDINGS:

- 12
- 13 1. The application has been advertised in accordance with Section 9.04 of the Skagit
- 14 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
- 15
- 16 2. The subject proposal is located on the shoreline of a property with a single-family
- 17 residence on Lake Cavanaugh in an area designated as a Rural Village by the
- 18 Skagit County Comprehensive Plan and within the Residential District under the
- 19 Skagit County Zoning Ordinance. The property is designated as Rural in the
- 20 SCSMMP.
- 21
- 22 3. Staff determined that the subject proposal is exempt from the Skagit County
- 23 Critical Areas Ordinance (CAO) per 14.06.090(5) since the proposal does not
- 24 increase the building footprint or the amount of septic effluent. The current septic
- 25 system is designed for 2 bedrooms only and therefore if the amount of bedrooms
- 26 were to be increased further CAO review would be necessary.
- 27
- 28 4. The proposal is categorically exempt from the State Environmental Policy Act
- 29 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.
- 30
- 31 5. No comments have been received from the public regarding the proposal.
- 32
- 33 6. Staff determined that the proposal is not located on a Shoreline of Statewide
- 34 Significance.
- 35
- 36 7. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline
- 37 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits
- 38 reads:
- 39
- 40 Variance permits for development to be located landward of the ordinary high
- 41 water mark (OHWM), except within areas designated marshes, bogs or swamps
- 42 pursuant to Chapter 173-22 WAC, may be granted provided the applicant can meet
- 43 all the following criteria; the burden of proof shall be on the applicant.
- 44
- 45 a. **That the strict application of the bulk, dimensional or performance**
- 46 **standards set forth in this Master Program precludes or significantly**



200008160052

Kathy Hill, Skagit County Auditor

8/16/2000 Page 8 of 11 12:16:47PM

1 **interferes with a reasonable use of the property not otherwise**
2 **prohibited by this Master Program.**

3 *The parcel is "pie shaped" narrowing the farther one goes landward. The*
4 *area directly landward of the existing structure is occupied by a steep*
5 *slope, a drain field, parking area and a septic tank. Reasonable use is*
6 *restricted to the existing building site when the topographic and*
7 *infrastructure placement are considered.*

- 8 **b. That the hardship described above is specifically related to the**
9 **property and is the result of unique conditions such as irregular lot**
10 **shape, size or natural features and the application of this Master**
11 **Program and not, for example, from deed restrictions or the applicant's**
12 **own actions.**

13 *The hardship is due to the boundaries of the lot (pie shaped), topography*
14 *and the location of the existing infrastructure.*

- 15
16 **c. That the design of the project will be compatible with other permitted**
17 **activities in the area and will not cause adverse effects to adjacent**
18 **properties or the shoreline environment designation.**

19 *The surrounding area has been developed for rural residential use as*
20 *demonstrated by the Residential zoning designation. The average setback*
21 *from the OHWM of adjacent properties within 300 feet of the side property*
22 *lines is 32.72 feet, thus the 50' minimum becomes the standard setback in*
23 *this case.. The current proposal should minimize adverse effects to the*
24 *shoreline environment by not expanding the existing footprint of the*
25 *structure.*

- 26
27 **d. That the variance authorized does not constitute a grant of special**
28 **privilege not enjoyed by the other properties in the same area and will**
29 **be the minimum necessary to afford relief.**

30 *The issuance of a variance for this proposal would be consistent with the*
31 *relatively high-density development in the rural village of Lake Cavanaugh.*
32 *Therefore, staff does not find the proposal to be a "grant of special*
33 *privilege" to the applicant.*

- 34
35 **e. That the public interest will suffer no substantial detrimental effect.**

36 *Any possible detrimental effects however how remote, should be mitigated*
37 *through compliance with the conditions placed on the development as*
38 *recommended by staff and the environmental consultant.*

39
40
41 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**
42

43 The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential
44 Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding
45 Residential Development is included as Attachment "A" of the staff report, staff has
46 summarized the policies involved.



200008160052

Kathy Hill, Skagit County Auditor.

8/16/2000 Page 9 of 11 12:16:47PM

1
2 Staff determined that the proposal does not conflict with the **general policies** regarding
3 residential development, coordination, optimum use, joint use, public access, public use,
4 natural resource processes, hazardous areas, water quality & quantity, PUD's, floating
5 homes, community services, Shoreline Management jurisdiction, location and design and
6 construction and impacts. Staff has further determined that the proposal complies with all
7 SCSMMP **regulations** regarding shoreline designation, general regulations, accessory uses,
8 hazardous areas, shore defense works, landfilling, public access, fragile areas, utilities, roads
9 and parking areas, drainage, sewage and screening **except** shoreline setbacks.

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

12 13 **2. REGULATIONS**

14 **A. Shoreline Area**

15 **(3) Rural**

16 (a) Residential development is permitted subject to the General and Tabular Regulations.

17 **B General**

18 **(9) Shoreline setback;**

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

22 *The average residential setback from the OHWM within 300 feet of the side property*
23 *lines is 32.72 feet, and the minimum setback is 50 feet from the OHWM in the Rural*
24 *shoreline designation, therefore, the "whichever is greater" in this case would be the 50*
25 *foot minimum required in Table RD. Hence, the total variance sought from the OHWM*
26 *for the second story addition and the deck replacement is 50 feet.*

27 28 **RECOMMENDATION**

29
30 Based on the above findings, the Skagit County Planning and Permit Center would
31 recommend for **approval** of a Shoreline Variance Permit subject to the following
32 conditions:

- 33
34
- 35 1. During construction, limit the amount of clearing and grading and soil disturbance to
36 only the area necessary to complete the project.
 - 37 2. Do not allow building debris or construction material to enter the lake.
 - 38 3. Prevent surface runoff from disturbed soils from entering the lake by using erosion
39 control measures, such as straw bales and silt fencing.
 - 40 4. The applicant must obtain a Skagit County Building Permit and receive all the
41 necessary approvals.
 - 42 5. The subject proposal shall comply with the Skagit County Shorelines Management
43 Master Program and the Shoreline Management Act RCW 90.58.
 - 44 6. The applicant shall strictly adhere to the project information (site diagram) submitted
45 for this proposal. If the applicant proposes any modifications of the subject proposal,

1
2
3
4
5
6
7
8
9

he/she shall request a shoreline permit revision from this office prior to the start of construction.

Prepared By: DD
Approved By:
Date: June 13, 2000
Amended:

UNOFFICIAL DOCUMENT



200008160052
Kathy Hill, Skagit County Auditor
8/16/2000 Page 11 of 11 12:16:47PM