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Skagit County Auditor

4/1/2002 Page 1 of 6 12:23PM

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

DOCUMENT TITLE: Order on Shoreline Variance Application SL 01 0833

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: James and Mary Ann Purkey

ASSESSOR PARCEL NO: P66938

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located at 33394 West Shore Drive, Lake Cavanaugh; a portion of Section 22, Township 33 North, Range 6 East, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** James and Mary Ann Purkey  
17042 N.E. 133d Street  
Redmond, WA 98052

**Agent:** Warren Otteson

**File No.** PL 01-0833

**Request:** Shoreline Variance

**Location:** 33394 West Shore Drive, Lake Cavanaugh, within a  
portion of Sec. 222, T33N, R6E, WM.

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To replace an existing cabin with a new one, encompassing  
a total area of 1,385 square feet, and located within 25 feet  
Ordinary High Water Mark (OHWM).

**Public Hearing:** After reviewing the report of the Planning and Permit  
Center, the Hearing Examiner conducted a public hearing  
on March 13, 2002.

**Decision:** The application is approved, subject to conditions.



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## FINDINGS OF FACT

1. James and Mary Ann Purkey (applicants) seek a Shoreline Variance to replace an existing cabin with a set back of 25 feet from the Ordinary High Water Mark (OHWM) on the shores of Lake Cavanaugh.

2. The new cabin will be encompass about 1,385 square feet, compared to the existing cabin's 788 square feet. The setback from the lake will remain the same as before. The new structure will be used as a vacation cabin as was the old one.

3. The location is 33394 West Shore Drive, within a portion of Sec. 22, T33N, R6E, W.M. The property is rectangular, measuring 60 feet wide by 280 feet long. It is one of the many narrow recreational lots platted along the shoreline in the late 1940's.

4. The shoreline in the vicinity is almost fully developed with vacation homes. The pattern of development places these structures relatively close to the lake. The average setback from the OHWM in the area is 28 feet.

5. The shoreline designation for the area is Rural Residential. The County's Shoreline Master Program (SMP) establishes a 50 foot setback from the OHWM in this shoreline environment. SMP 7.13(2)(C), Table RD. The applicants' request is for a variance from this standard so that they can locate their new cabin in essentially the same place as their existing one.

6. There is an approximately 250-foot-long driveway on the property. The construction of the new cabin will result in shortening it somewhat by removing the waterward 25 feet. An approved septic system has been installed to the rear of the proposed new cabin.

7. Construction of the new larger structure will necessitate the removal of a number of large trees, three within the 50-foot setback. A Fish and Wildlife Habitat Assessment, dated August 6, 2001, was prepared by Edison Engineering. The report concluded that the site will not be significantly degraded by reconstructing the house to a slightly larger footprint and the removal of the trees, if mitigation is provided for the tree removal.

8. The Department of Ecology in comments suggested that the project be reconfigured to save trees within the setback. A responsive addendum to the Fish and Wildlife report recommended that any trees removed be replaced by plantings on a three-to-one basis, with two-thirds of the replacement trees being western hemlock and one-third being cedar. (One-third of the replacement trees could be substituted with native shade tolerant shrub-scrub vegetation such as snowberry, salal or evergreen huckleberry.)

9. The consultant's opinion is that this mitigation will adequately compensate for the loss of three trees from within the buffer such that there will be no reduction in buffer



functions. The mitigation measures recommended in the Fish and Wildlife Report have been included as conditions of approval.

10. 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.

11. The Staff Report analyzes the application against these criteria and finds that the proposal, as conditioned, will meet them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

12. This is a modest redevelopment to vacation property. The existing cabin is small and cramped. It does not even have a bedroom. Further, the existing cabin is in disrepair. A new foundation is required. The upgrade will improve the quality of development on the site without serious damage to the environment. The resulting structure will be wholly consistent with other development in the vicinity.

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 persons and the subject matter of this proceeding. SMP 8.07.

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

3. As conditioned the proposal is consistent with the requirements for a shoreline setback variance. SMP 10.03(1)

4. The following conditions should be imposed:

(a) The project shall be constructed in accordance with the application materials, except as the same may be modified by these conditions.

(b) The applicants shall obtain all other required permits and abide by the conditions thereof.

(c) The applicants shall record the site plan dated July 2001, clearly marking the land waterward of the proposed structure as a Protected Critical Area, and shall show the types and location of native vegetation to be planted.

(d) The applicants shall comply with the Fish and Wildlife Assessment and addendum thereto. The following actions shall be taken:

(1) Any trees removed shall be replaced by plantings on a three-to-one basis, with two-thirds of the replacement trees being western hemlock and one-third cedar. (One-third of the replacement trees may be substituted with native shade tolerant shrub-scrub vegetation such as snowberry, salal, or evergreen huckleberry.)

(2) Silt fences shall be erected at five feet waterward of the edge of the proposed house, thence to the property line at a 45-degree angle to set clearing limits and to minimize transport of sediments to the lake.

(3) No construction materials, including soil, shall be stored within the riparian buffer.

(4) Drainage from roof downspouts shall be collected and transported to the shore at the toe of the bulkhead. A rock apron consisting of river rock shall be constructed to reduce flow velocities and eliminate the potential for erosion of the beach.



(5) Construction shall take place during the dry season (end of May till the end of September).

(6) Cut and fill areas at the site shall not exceed a maximum of 50 percent slope. Following construction, all disturbed areas shall be seeded with an erosion control mixture of native grass seed.

(e) If the applicants propose any modification to the subject proposal, they shall request a permit revision from the Planning and Permit Center prior to constructing the same.

(f) The project shall commence within two years of the effective date of this permit and be completed within five years, unless an extension is requested. If the project does not meet the timeframes for commencement or completion the permit shall become null and void.

(g) Violation of any of the terms of this permit may result in its revocation.

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

#### DECISION

The requested Shoreline Variance is approved, subject to the conditions set forth in Conclusion 4 above.



Wick Dufford, Hearing Examiner

Date of Action: April 1, 2002

Copy Transmitted to Applicant: April 1, 2002

#### APPEAL/RECONSIDERATION

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center 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 the Planning and Permit Center within five (5) days after the date of decision, or decision on reconsideration, if applicable.

