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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 PERMIT SL020567 and ADMINISTRATIVE
SPECIAL USE SU020662

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: LUVENA HAYTON

ASSESSOR PARCEL NO: P61772; 61773

LEGAL DESCRIPTION: The proposed project is located at 5171 Guemes Island Road,
Anacortes, WA; a portion of Section 36, Township 36 North, Range 1 East, W.M., Skagit
County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Luvena Hayton
5171 Guemes Island Road
Anacortes, WA 98221

File Nos: PL 02-0567 -- Shoreline
PL 02-0662 -- Administrative decision

Request: Shore side yard setback; Front and side yard zoning setback

Location: 5171 Guemes Island Road, within a portion of Sec. 36,
T36N, R1E, W.M., on Guemes Island.

Land Use Designations: Shoreline -- Rural Residential
Zoning -- Rural Intermediate

Summary of Proposal: To construct a 12 by 20 foot addition to an existing carport
extending to one foot two inches from the east property
line and reaching to within 30 feet of Guemes Island Road.
(front yard).

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on June 25, 2003.

Decision: The application is approved, subject to conditions.



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FINDINGS OF FACT

1. Luvena Hayton (applicant) seeks variances in order to build a new garage in front of an existing carport. The new structure would intrude into the applicable side and front yard setbacks. The project is proposed for her seasonal home on Guemes Island located at 5171 Guemes Island Road.

2. The site is within a portion of Sec. 36, T36N, R1E, W.M. The Shoreline designation is Rural Residential. The zoning is Rural Intermediate.

3. The lot is a shoreline property (P61772) that is 65 feet wide and 173 feet long. The narrow dimension abuts the waters of Padilla Bay on the north and Guemes Island Road on the south. The road side of the lot is considered the front yard. The property has a gentle slope towards the water.

4. A 1,600 square foot house and a carport with a circular driveway entrance were built on the property in the late 1950's, before zoning setbacks and shoreline regulations were in place. The modest house was built as a summer cabin. The carport was eventually enclosed.

5. The enclosed carport is alongside the east side of the house. The house and carport are currently set back 50 feet from Guemes Island Road. The carport is only one foot two inches from the side lot line on the east. Insofar as the side yard setback is concerned, the present structure is a legal nonconforming use.

6. The carport was built at a time when both garages and cars were narrower than they are today. It is only 10 feet wide, which means that getting in or out of even a small car parked inside is very difficult. The driver has to squeeze out on the passenger side. The structure does not now provide reasonable garage space.

7. The proposed new garage is to be a 12 by 20 foot structure -- only slightly larger but big enough to accommodate one average-sized car. The plan is to add the new garage onto the front of the present carport, connected by an interior door for direct access to the house during inclement weather. The old carport area will provide needed space for utilities -- washer, dryer, refrigerator. The new garage, aligned with the old carport, will extend the one-foot-two-inch setback from the side lot line on the east. The setback from Guemes Island Road will be 30 feet.

8. The County's Shoreline Master Program (SMP) establishes an eight foot minimum side yard setback for residential development in the Rural Residential shoreline designation. Eight feet is also the applicable side yard set back under the zoning code for the Rural Intermediate zone.



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9. The applicable minimum front yard setback from the road in the Rural Intermediate zone is 35 feet.

10. Accordingly, the applicant seeks setback variances for the side yard and front yard in order to place the garage as proposed.

11. The applicant's house is set back approximately 100 feet from the Ordinary High Water Mark (OHWM) of the bay. A deck along a portion of the structure extends a about six feet shoreward from the house.

12. A Fish and Wildlife Site Assessment prepared pursuant to the Critical Areas Ordinance shows that the average shore setback from the OHWM for houses within 300 feet on both sides of the applicant's residence is 73 feet. Thus the applicant's house is located further back from the water than most of the others in the immediate vicinity.

13. On the waterfront, alternative bands of sand and gravel slope up to scattered logs and a concrete bulkhead located a few feet south of the OHWM. The property above the OHWM is in lawn. A big leaf maple is on the west property line. The east property line is bordered by a hedge of Mugho pines, a small cherry tree, and a Siberian spruce.

14. None of the area between the house and the water will be affected by the project. Nevertheless, it is proposed that most of the area shoreward of the existing house be placed within a recorded Protected Critical Area (PCA), insuring that future development will not occur there.

15. The proposed garage addition has been designed by an architect with an eye towards its aesthetic integration with the existing residential structure. It is aligned with the east side of the existing house/carport and oriented to allow straight-in access. It will continue the roofline, sidewall and exterior finishes of the existing house. The visual effect will be to make the entire residence appear as one structure, rather than a house with a tacked-on garage.

16. The result will also be to avoid major reconfiguration of the features of the present house. Most of the window area of the existing bathroom will be kept and the present entryway will be preserved. The half circle driveway will be retained and will provide adequate space to prevent any "back-out" danger on Guemes Island Road.

17. The new garage will be less than 10 feet high. It will minimally intrude on lateral views of the applicant's front yard from the neighbor to the immediate east. Antique stained glass windows in the east side and glass panels in the garage door will be inserted to make the structure itself more attractive.

18. Several neighbors wrote in support of the applicant's proposal. A number of others signed a form letter in opposition. The chief opponent, however, is the next door



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neighbor to the east. His more recent and much larger home was built in conformity with current setback requirements. Because his house is large and further shoreward, it also effectively cut off a portion of the applicant's easterly shoreline view.

19. The applicant's architect supplied a thorough survey of setbacks on other properties in the neighborhood, covering 16 houses to the south and 14 houses to the north of the applicant's, all on the beach side of Guemes Island Road. In this area the garages are built on the road side of the houses. Of 17 garages and 7 other accessory structures 12 appear to be built within three feet of the side property line.

20. With regard to the front setback, 11 of the 24 garages and accessory buildings are on or very near the front property line and 7 others are less than the required 35-foot setback.

21. For the applicant, it is argued that approval of the requested new garage will not establish an undesirable precedent. There is only one other house in the neighborhood that is on or near the side lot line and it already has a detached garage. In the applicant's view, granting this request is unlikely to trigger a flurry of requests for similar variances because, although there are many other examples of nonconforming setbacks, there are no other exactly similar circumstances.

22. A functional garage is a usual and reasonable use of residential property. Because of the placement of existing structures, there is really no logical place for a garage to go on the applicant's lot other than where proposed. While it is physically possible to fit a garage into the space available in the front yard and comply with the setbacks, to do so would require such extensive remodeling of the house as to render the project impractical.

23. On being consulted, the Department of Public Works advised that it would have no problem with a 30-foot front yard setback from the road from the traffic safety standpoint.

24. SMP 10.03(1) sets forth the criteria for granting shoreline variances for developments landward of the ordinary high water mark. The criteria are:

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 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.

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

25. Under SCC 14.08.030, the criteria for a zoning variance are substantially similar.

26. Under all the circumstances denial of the variances sought will significantly interfere with a reasonable use of the property that is otherwise permitted. The photographic evidence and the survey of neighboring properties demonstrate that the proposal will be compatible with other permitted activities and uses in the neighborhood. There will be no adverse shoreline effects and the impacts on the nearest adjacent property will be minor.

27. Given the development pattern in the area, allowing this small garage will not constitute a grant of special privilege. This extends an existing encroachment on the side yard and results in a setback from the road that is greater than that at numerous neighboring properties. The garage sought is modest -- barely enough room for one average-sized car. In this situation, the variance sought is the minimum necessary to afford relief.

28. The Examiner accepts the applicant's argument that cumulative impacts are unlikely, and finds that the public interest will suffer no substantial detriment.

29. Indeed, the proposed new garage will have virtually no shoreline impact. It more than meets the requisite 50-foot setback from the water. It will be built on the landward side of the existing house and carport and will cover a small area that is now in grass. The addition will not intrude in any way into the water view or solar access of any neighboring property. A PCA will be recorded, creating more protection for the critical area along the shore than presently exists.

30. The next-door neighbor to the east is concerned that , among other things, the proposed garage extended so close to the east lot line will constitute an increased fire safety hazard. The Fires Marshal's office, responding at his request, stated the following:

This office is opposed to the reduction in any side yard set backs if they are already only 8 feet. Rural Fire Departments are set up to be able to fight a fire in a single building. Reducing the side yard set backs can have a cumulative effect of creating communities where the houses are very



close together. This is particularly true when the lots are narrow. This could be even more of a problem on Guemes, where the Mutual Aid response that other Skagit County Fire Districts have available to them is not really possible.

This response is a general statement of policy, not a particularized analysis of this application. Here the already existing situation is that the neighbor's setback is at eight feet and the side yard setback for the applicant's lot is one foot two inches. The proposal does not reduce these dimensions. It does increase the linear distance that this situation will exist between buildings. But, there is nothing specific in the record to show that this addition would appreciably increase the fire safety risk at this site. Moreover, no cumulative effect in terms of the community is anticipated.

31. The garage as proposed will constitute the enlargement of a lawful nonconforming use. The Examiner finds that this enlargement will be accomplished without appreciable threat to the health, safety and general welfare of the public or to the shoreline environment and the purpose of the Shoreline Act and local master program. To deny this enlargement would constitute a hardship, effectively depriving the applicant of a normal residential amenity. This hardship would be greater than the public benefit derived from denial of the non-conformity.

32. Any conclusion herein that 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 9.06, SCC 14.06.060.

2. SCC 14.16.810(4) allows the Administrator of the Planning and Permit Center to reduce front, side and rear yard zoning setbacks where special conditions impact reasonable development of property. The mechanism for doing so is an administrative variance. SCC 14.10.020(1)(c). The granting of such a variance is normally a Level I process. SCC 14.06.050(1)(a)(xiii). However, because a shoreline variance is also required, consideration of the zoning variances here has been consolidated with the processing of the shoreline variance into a single proceeding before the Hearing Examiner at Level II -- the "highest" permit level. SCC 14.06.060.

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

4. The garage is an accessory to residential development, permitted outright in the Rural Residential shoreline environment. SMP 7.13(2)(A)(2). The project is exempt from the Shoreline Substantial Development Permit requirement, but is subject to applicable shore setbacks. RCW 90.58.030(3)(e)(vi), SMP 7.13(2)(B)(3).



5. The findings support a conclusion that, as conditioned, the project will be consistent with the shoreline variance requirements. SMP 10.03(1). Indeed in the context of the already high level of development in this residential neighborhood, the impact of this project on shoreline resources is essentially nil.

6. Both the front and side yard, the requirements for a zoning variance are also met. SCC 14.10.030(2). The Public Works Department was consulted as to traffic safety. The public health, safety, and welfare will be maintained. SCC 14.16.810(4).

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

8. The following conditions should be imposed:

(1) The project shall be constructed in accordance with the plans (Option 1) and application materials submitted, except as the same may be modified by these conditions.

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

(3) The applicant shall comply with the Fish and Wildlife Assessment prepared by Rupert Schmitt, dated November 6, 2002. The following Best Management Practices shall be employed:

(a) Keep heavy equipment out of the seventy-three foot shoreline buffer.

(b) Construction supplies shall not be stockpiled within the buffer.

(c) Re-vegetation of any disturbed areas shall occur after construction.

(4) A Protected Critical Area shall be mapped and recorded for the seventy-three foot shoreline buffer.

(5) The project must be started within two years of the date of Department of Ecology approval hereof and finished within five years or the shoreline variance shall become void.

(6) Failure to comply with any condition of approval may be grounds for permit revocation.



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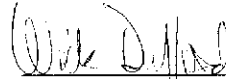
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DECISION

The requested Shoreline side yard variance and the request zoning front and side yard variances are approved, subject to the conditions set forth in Conclusion 8 above.



Wick Dufford, Hearing Examiner

Date of Action: July 28, 2003

Copy Transmitted to Applicant: July 28, 2003

RECONSIDERATION/APPEAL -- SHORELINES

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.

RECONSIDERATION/APPEAL -- ZONING

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), 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 14 days after the date of the decision, or decision on reconsideration, if applicable.



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