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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 APPEAL AP 04 0560

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: CHARLES SCHEID

ASSESSOR PARCEL NO: P66388

LEGAL DESCRIPTION The property is located at 34208 North Shore Dr.; within a portion of Section 26, Township 33 North, Range 06 East, W.M. Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

In the Matter of the Appeal of  
An Administrative Decision Denying  
A Reduction in Front Setback

**CHARLES SCHEID,**

Appellant,

v.

**SKAGIT COUNTY**

Respondent.

**PL04-0560**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION**

This is an appeal of an administrative decision denying a reduction in the standard front setback on residential property. The matter came on regularly for hearing before the Hearing Examiner on September 22, 2004.

David Hough, Consultant, represented the Appellant Scheid. Carly Ruacho, Associate Planner, represented the respondent County Planning and Permit Center. Exhibits were admitted, testimony was taken and argument was made.

On the basis of the record the following is entered:

**FINDINGS OF FACT**

1. On July 13, 2004, the Planning and Permit Center issued an administrative decision denying the application of Charles Scheid for a reduction in front setback on property located at 34208 North Shore Drive on Lake Cavanaugh. The file number for the application is PL03-0732. This appeal followed.

2. The subject property is Lot 50, Block 2, Lake Cavanaugh Subdivision #1, within a portion of Sec. 26, T33N, R6E, W.M. The parcel number is P66388. The zoning is Rural Village Residential.

3. Pursuant to SCC 14.16.810(4), the Administrative Official may reduce the required front, side or rear setbacks "where topography or critical areas or the lot's size and configuration impact the reasonable development of the property." To reduce the front or rear setback, the Administrative Official must determine that "the public health, safety, and welfare will be maintained." Consultation with the Public Works Department concerning traffic safety may be solicited during the analysis.



4. The subject property is approximately .5 acres in size and roughly rectangular in shape. A 60 foot right-of-way for North Shore Drive is located on the southerly ¼ of the lot. Most of the lot lies north of the road. The small portion south of the road borders the lake. North Shore Drive traverses the width of the lot, a distance of about 60 feet. The portion of the property north of the road measures 60' by 353'. The portion south of the road measures 60' x 17.9'.

5. There is a significant initial slope up on the north side of the road, owing to the cut made when the road was built. The remainder of the north part of the lot slopes up gently toward the rear of the property.

6. The lot is adjoined on the east and west by identically shaped lots that are also part of the Lake Cavanaugh plat. On the north (rear), the property abuts a large parcel designated as Secondary Forest-Natural Resource Land.

7. There is an existing 584 square foot residence, constructed in 1965, situated on the south portion of the property next to the lake. A survey shows that this structure encroaches onto the road right-of-way by about nine feet. On the north part of the property is a water well and a one bedroom septic system which serve the existing residence.

8. The standard front setback for structures in the Rural Village Residential district is 35 feet. SCC 14.16.310(5)(a). Mr. Scheid (Appellant) has proposed to place a 40' by 40' two-story residence with garage on the north side of the road at 10' from the right-of-way line. The structure would be about 35 feet from the edge of pavement on North Shore Drive.

9. Without benefit of permits, the Appellant has excavated an area for the placement of the structure at the grade of the road. The application to reduce the setback is a response to an enforcement action (File # CE02-0095).

10. In order to build the house and garage at the road's grade, as proposed, an additional 10 feet of horizontal distance would need to be excavated from the slope.

11. Properties on either side, identically sized and with similar topography, are already developed with residences north of the road. Such homes are built on the natural slope and not in an excavated area level with the road surface. The placement of these homes was consistent with the setbacks in effect at the time of their construction.

12. If all of the standard setbacks are applied to the subject parcel (200 feet on the north, 35 feet from the north side of the right-of-way, and eight feet on the east and west), there remains a building envelope north of the road measuring approximately 118 feet by 44 feet.



13. Critical areas staff reviewed the application and concluded that there are no critical area conditions on the property that would preclude locating the proposed structure in a manner consistent with the 35 foot front setback.

14. The Department of Public Works was consulted and commented as follows:

10 Feet setback does not allow the applicant enough room to park a vehicle in front of the garage and keep it off County ROW. Setback should be a minimum 20 feet. The existing cabin on the other side of the road is encroaching on County ROW, so it is already restricting the use of the ROW.

15. The existing septic tank is 20 feet to the north of the back of the proposed house and garage. The drainfield is 10 feet to the north of the septic tank. A five foot setback is required between the septic tank and foundation. A ten foot setback is required between the drainfield and foundation.

16. In denying the setback reduction requested, the Planning and Permit Center, in essence, concluded that reasonable use of the property, consistent with the standard setback, is not impacted by critical areas, topography, or the lot's size and configuration.

17. The Appellant emphasizes that the paved road occupies only about 15 feet of the 60-foot right-of-way at the site and that the paved area is toward the south side of the right-of-way. This means that about 25 feet of the north side of the right-of-way area is not now used for travel. With the 10 foot setback requested, the distance of the house and garage from the paved portion of the road would be 35 feet.

18. Although legally the right-of-way should not be used for parking, the restricted off-street space available in this area causes right-of-way parking to occur regularly. The Appellant argues that the 10 foot setback requested would provide parking space that would be off of the right-of-way.

19. The Appellant is concerned that being forced to comply with the standard 35 foot setback will require him to relocate the septic tank.

20. The Appellant points to numerous other structures in the area which encroach on the established setbacks. Evidence was provided that many of these have been permitted by the County.

21. Letters from eight persons or groups owning in the neighborhood were received in regard to the initial application. Many of these wrote letters for the appeal. All of the letters were in opposition. Four opponents testified at the hearing. They uniformly condemned the un-permitted excavation into the bank and argued that, while the pattern of development in the area is mixed, most of the building north of the road has in recent times complied with the setbacks. They believe that most of the setback



encroachments were created by early development, prior to the adoption of the current restrictions. They note that the Appellant's existing cabin already extends into the right-of-way on the south. There is a general feeling that road safety would be further compromised by the Appellant's development. The neighbors also expressed concerns about soil erosion, tree root undermining, and the enclosure of a stream in a culvert. They maintained that approval of the request would, in effect, endorse a pattern of unlawful behavior.

22. The Examiner finds that there is adequate space on the north side of the property to build a reasonably-sized home without reducing the front setback. Parking could be provided by the construction of a driveway. It is probably true that the septic tank would need to be moved, but there is enough room to accomplish this. Moreover, if needed a reduction of the 200-foot setback from natural resource land on the north could be sought. There is no proof that construction of a reasonable home would necessarily impinge on the well protection radius.

23. The Examiner concurs with the Planning and Permit Center that, in this case, neither topography, nor critical areas, nor lot size and configuration impact the reasonable development of the property. Further, accepting the opinion of the Department of Public Works, allowing the lesser setback would pose a threat to the maintenance of public safety.

24. 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 appeal. SCC 14.06.110(11).

2. Setbacks are measured from the lot line, the street or the road right-of-way or easement whichever is most restrictive. SCC 14.04.020 (Definitions). The use of the right-of-way line here is the appropriate starting point for measurement. It is, therefore, irrelevant that the paved portion of the road is some distance from the right-of-way line.

3. The pattern of development along Lake Cavanaugh does indeed present a varied picture where setbacks are concerned. Most of the non-conformity is south of the road on the lake side. But even so, there are assuredly encroachments north of the road. Some of these appear to have been pre-regulation; some are post-regulation but illegal; and some have been allowed by the County. This situation does not necessarily provide a justification for allowing more encroachments or setback reductions.

4. The legal basis for reducing the setback is that there isn't enough buildable area to carry out reasonable development and still meet the standards. Sometimes a pattern of encroachment can demonstrate that, as a general proposition, the lots in the



area lack the needed space for development. This, however, is not true in the instant case. North of the road in this vicinity there is adequate space for development without adjusting the setback from the road.

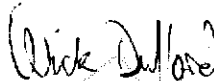
5. To prevail on appeal, an appellant must prove that the decision of the Administrative Official was clearly erroneous. SCC 14.16.110(11). The Appellant here failed to carry this burden. The requirements of SCC 14.16.810(4) are not met by this application.

6. The issue of the unpermitted excavation is a separate problem from the setback for the house and garage. Even the allowance of a less than standard front setback would not, in and of itself, authorize the structures to be located at the grade of the road. The excavation question is left to the still-active enforcement proceedings.

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

### DECISION

The administrative decision is affirmed. The appeal is denied.



Wick Dufford, Hearing Examiner

Date of Action: November 30, 2004

Date Transmitted to Parties: November 30, 2004

### RECONSIDERATION/APPEAL

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 14.06.110(13), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the decision, or decision on reconsideration, if applicable.

