

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: The application for a Zoning Variance,
Shoreline Variance, and a Critical Areas
Variance Permit by **Conor Keilty**

PL24-0393 (VAR)
PL24-0394 (SVAR)
PLAN3-2024-000 (CVAR)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant, Conor Keilty, requests to replace a single family-residence on a waterfront lot.

Decision: The requested Zoning Variance, Shoreline Variance, and Critical Area Variance permits are granted, subject to conditions of approval.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at a properly noticed public hearing.

FINDINGS OF FACT

I.

Applicant: Conor Keilty
14341 Jura Drive

Anacortes, WA 98221

Site Address: 14341 Jura Drive
Anacortes, WA 98221

Legal Description: (0.3700 ac) LOTS 8 AND 9, GIBRALTER ANNEX, RECORDED IN VOLUME 7 OF PLATS, PAGE 9, RECORDS OF SKAGIT COUNTY, WASHINGTON. TOGETHER WITH TIDELANDS OF THE SECOND CLASS IN FRONT OF.

Parcel No: P73622

Lot Size: 0.37 acre

Zoning: Rural Intermediate

Application Date: Shoreline Variance Application,
Critical Areas Variance Application,

Determination of Completeness: Completeness letters for all 3 variances, issued Nov. 11, 2024

Shoreline Designation: Rural Residential

Statewide Significance:

SEPA Review: The recommended variances are based on special property characteristics including shape, size, topography and location and, therefore, are exempt from SEPA review under WAC 197-11-800(6)(e).

Notice Information: Notice of Application published in the Skagit Valley Herald, December 5, 2024 and December 12, 2024
Notice of Public Hearing published, February 20, 2025

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act
 - RCW 36.70B, Local Project Review
 - RCW 90.58, Shoreline Management Act of 1971 (“SMA”)
- Washington Administrative Code (WAC)
 - WAC 197-11, SEPA Rules

- WAC 246-272A, On-Site Sewage Systems
- Skagit County Code (SCC)
 - SCC 14 – Unified Development Code
 - SCC 14.02 – General Provisions
 - SCC 14.02.070 – Office of the Hearing Examiner
 - SCC 14.06 – Permit Procedures
 - SCC 14.10 – Variances
 - SCC 14.16 – Zoning
 - SCC 14.16.300, Rural Intermediate (RI).
 - SCC 14.24 – Critical Areas Ordinance
 - SCC 14.32 – Stormwater Management
- Skagit County Shoreline Master Program of 6/29/76, as amended by Skagit County Board of Commissioners through 7/10/95 (SMP)
- Skagit County Comprehensive Plan of 6/30/16, as amended by Skagit County Board of Commissioners through 12/19/23 (SCP or “Comprehensive Plan”)
- Skagit County Hearing Examiner’s Rules of Procedure (SCRE), as authorized by Skagit County Commissioners per Resolution #R20240280 on 12/16/24

Hearing Date: 3/28/25 at 9:00 AM

Testifying Parties of Record:

Andrew Wargo
 Skagit County Planning & Development Services
 1800 Continental Place
 Mount Vernon, WA 98273

Conor Keilty
 14341 Jura Drive
 Anacortes, WA 98221

Hearing Examiner Exhibit List:

1. Pre-Application Meeting Notes Keilty, dated May 15, 2024
2. Shoreline Substantial Development Conditional Use Variance Application_PL24-0394, dated October 15, 2024
3. Variance Application Form, dated October 15, 2024
4. Narrative Statement, dated October 15, 2024
5. Shoreline Variance Request Narrative Statement_, dated October 15, 2024

6. Supplemental Info Including FWHCA & Mitigation Report _ dated October 15, 2024
7. JARPA_PL24-0394, dated October 15, 2024
8. Letter of Incompleteness, dated November 11, 2024
9. Letter of Completeness, dated November 21, 2024
10. Letter of Completeness, dated November 21, 2024
11. NODA, dated December 5, 2024
12. NODA-Mailing List
13. NODA Publishing Proof, dated December 3, 2024
14. Notice of Development Application Shoreline_ Critical Areas _ Zoning Variances Email to Agencies & Tribes, dated November 5, 2024
15. NODA Response USACE, dated December 5, 2024 _
16. Internal Comment, Building Review, dated January 15, 2025
17. Consistency_Review_Memo_PL24-0393_PL24-0394_PLAN3-2024-0001, dated January 16, 2025
18. Applicant Response to Consistency_Review_PL24-0393_PL24-0394_PLAN3-2024-0001, dated January 17, 2025
19. Final Site Plan, dated January 17, 2025
20. Notice of Public Hearing, dated February 20, 2025
21. Notice of Public Hearing_Proof_of_Publishing, dated February 18, 2025
22. Notice of Public Hearing_Mailing_List, dated February 18, 2025
23. Notice of Public Hearing_Email to Agencies and Tribes, dated February 20, 2025
24. Survey_&_Easements
25. Staff Report, *dated* February 20, 2025
26. Revised Notice of Public Hearing, *dated* 2/20/25
27. Revised Notice of Public Hearing, *dated* 3/11/25
28. E-mail w/ Department of Ecology, *dated* 3/17/25

II.

The Applicant is requesting approval for three different variances to replace a single family-residence on a waterfront lot.

The proposed development is on a parcel that is a 0.37-acre parcel on Fidalgo Island on the western shore of Similk Bay and includes second-class tidelands. Jura Drive, a private dead-end road serving eight properties runs north-south through the middle of the property, and immediately west of Jura Drive is a retaining wall at the toe of a steep vegetated slope which is a geological hazard for residences.

The existing 2,061 square-foot residence, built in 1955, lies almost immediately east of Jura Drive,

and to the east of it lies an approximately 3,200 square foot lawn extending to the shoreline. The septic drainfield is in the western part of the lawn and a concrete pad is in the south part of the lawn. There is a bulkhead east of the lawn. At its north-end, the bulkhead is at the OHWM; at its south end the bulkhead is west of the OHWM. A marine railway, no longer used, extends into the tidelands in the southern portion of the property.

The proposed project is to replace the existing residence with a similar-sized two-story residence. Proposed mitigation for impacts to the 100-foot critical areas buffer on the shoreline is removing the concrete pad and planting approximately 2,442 square feet of the lawn area with native vegetation and planting an additional 1,372 square feet with native meadow mix.

Site limitations and strict interpretation of zoning and shoreline setbacks, and critical areas buffers, would prevent replacement of the home without the variances, as: the required front setback of 25 feet for the second story addition; The submitted drawings show an expansion of the footprint toward the marine shoreline, which would increase the non-conformance of the existing structure and the standard critical area buffer for the Rural Residential shoreline is 100 feet; the setback for the proposed new residence would be less than the 100-foot shoreline buffer in Rural Residential Shoreline Area Designation; and less than the Shoreline setback of 50-foot Shoreline setback.

III.

The Skagit County Planning and Development Services Staff (the “Department”) have recommended approval of the requested Zoning Variance, Shoreline Variance, and the Critical Areas Variance permit in a “Staff Report for Public Hearing” (“Staff Report” **Ex. 25**).

The Applicant has indicated there are no factual or legal inaccuracies in the Staff Report’s findings or conclusions, and that they agreed with the conditions proposed.

The Findings of Fact and Conclusions of Law in the Staff Report, a copy of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by the findings herein.

IV.

SCHE §14 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection by the applicant or the Department was made to any of the 28 exhibits that were admitted into the record.

V.

Any Conclusion of Law below which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

Residential development is a permitted use with the Rural Residential shoreline area and the Rural Intermediate zoning designation.¹

II.

Shoreline Variances

The Hearing Examiner is authorized to hear, review and pass consideration on variance permits from the regulations of this SMP.²

Variances from the application of specific bulk, dimensional or performance standards set forth in the SMP may be permitted where there are extraordinary or unique circumstances relating to the property; this is for circumstances where the strict implementation of the SMP would impose unnecessary hardship and such compliance with the SMP would prohibit reasonable use of the property.³

¹ SCC 14.16.300(2)(d)

² SMP §10.02(1)

³ SMP §10.01

As the dimensions of the lot prevent locating a reasonably sized replacement residence outside of the minimum 50-foot setback under the Shoreline Master Program, a variance would be required for the proposed 42 foot setback.⁴

Shoreline Variances fall into two categories, those for uses that fall above the OHWM and those that are located either waterward of the OHWM or within marshes, bogs or swamps as designated pursuant to WAC 173-22. The latter have an additional requirement to meet such “[t]hat the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.”⁵

In the case at hand, the proposed use involves development landward of OHWM. This means a Shoreline Variance can only be granted if it meets the less stringent criteria as follows:

- a. That the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes 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 requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.⁶

And, in addition to the above criteria the Hearing Examiner must consider the cumulative impact of additional requests for like actions in the area.⁷

The strict application of the bulk, dimensional or performance standards set forth in the SMP precludes a reasonable use of the property not otherwise prohibited; and that hardship is specifically related to the property’s unique conditions. The granting of this decision is not likely to result in additional neighboring development that would not be permitted otherwise.

⁴ SMP §7 at “Table RD” on 7-110

⁵ Compare SMP §§10.03(1) and (2)

⁶ SMP 10.03(1)

⁷ SMP 10.03(3)

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Shoreline Variance criteria. Consequently, subject to proposed conditions of approval, the Shoreline Variance Permit should be approved.

III.

Critical Areas Variance

Any person wishing to deviate from the terms and standards outlined by the Critical Areas Ordinance (“CAO”),⁸ can seek a Critical Areas Variance where the strict application of that ordinance is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity, due to special circumstances applicable to the subject property, including size, shape, and topography.^{9, 10}

Given the standard 100-foot marine shoreline buffer and the location of the lot, it is impossible to reasonably use this lot with the setback requirements. The CAO also has septic setback requirements, that are not met by this proposal, including the 100 foot setback from surface water, which this proposal violates. As the proposal does not meet those requirements and is in fact in the critical area, and thus a critical areas variance is required for the construction of any of the proposed additions.

Critical area variance proposals that contemplate a 50% or greater reduction of standard buffer widths must be heard by the Hearing Examiner.¹¹ To approve a Critical Areas Variance, the Hearing Examiner must find:

- a) The issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the dimensional setback and other requirements for the critical areas regulated by this Chapter; and
- b) Preparation of a site assessment and mitigation plan by a qualified professional pursuant to the requirements of SCC 14.24.080 and all other

⁸ SCC 14.24

⁹ SCC 14.24.140

¹⁰ “Provided however, that those surrounding properties that have been developed under regulations in effect prior to the effective date of [SCC 14.24] shall not be the sole basis for the granting of the variance.” *Id.*

¹¹ SCC 14.24.140(1)(b)

applicable sections of this Chapter. The site assessment and mitigation plan shall be prepared utilizing best available science; and

- c) The conclusions of the site assessment must utilize best available science to support a modification of the dimensional requirements of this Chapter; and
- d) The site assessment and mitigation plan demonstrate that the proposed project allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property; and
- e) The reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- f) The granting of the variance will be consistent with the general purpose and intent of this Chapter, and will not create significant adverse impacts to the associated critical areas or otherwise be detrimental to the public welfare; provided, that if the proposal is within the special flood hazard area (SFHA), the applicant must demonstrate that the proposal is not likely to adversely affect species protected under the Endangered Species Act, or their habitat; and
- g) The inability of the applicant to meet the dimensional standards is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line after the effective date of the ordinance codified in this Chapter; and
- h) The granting of the variance is justified to cure a special circumstance and not simply for the economic convenience of the applicant.¹²

And, the Hearing Examiner may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts and to ensure that impacts to critical areas or their buffers are mitigated to the extent feasible utilizing best available science.¹³

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Critical Areas Variance criteria. Consequently, subject to conditions of

¹² SCC 14.24.140(3)

¹³ SCC 14.24.140(4)

approval, the Critical Areas Variance Permit should be approved – IF the project also meets the general variance criteria of SCC 14.10, as discussed below.

IV.

General Variance Criteria

Zoning requires a front setback of 25 feet from minor access and dead-end street.¹⁴ Jura Drive is a dead-end street, and the proposal is to place the home within 10 feet of Jura Drive, which cannot be without a variance.

Additionally, in seeking a Critical Areas Variance, the General Variance criteria must also be met; and in the case here of a zoning variance, they must be met for the zoning variance as well. This is clear because SCC 14.10.020(1)(h) specifically refers to critical area variances at the administrative level and limits them to 50% or under though this is also recited in SCC 14.24; consequently SCC 14.10 is meant to encompass all of SCC Title 14,¹⁵ and also directs additional criteria that may be outlined in SCC §§ 14.16, 14.24, etc.¹⁶ So, in addition to the Critical Areas Variance Criteria, the project must also meet the General SCC 14.10 Variance Criteria.

Title 14 encompasses all development in Skagit County in order to “implement the Revised Code of Washington (RCW) and the Skagit County Comprehensive Plan on matters concerning land and building development and other related issues...” as well as other Skagit County policies outlined in Title 14.¹⁷ It is “applicable to all land within unincorporated Skagit County except as allowed by law.”¹⁸

Any person wishing to deviate from the terms and standards outlined in SCC Title 14, can seek a variance where in specific cases that will not be contrary to the public interest, and where, due to special conditions, literal enforcement of the provisions of this Code would result in unnecessary hardship, that is otherwise permissible in the zoning.¹⁹ There are three levels of variances in Skagit

¹⁴ SCC 14.16.300(5)(a)(i)

¹⁵ SCC 14.10.010 “Variances from the terms of this Title” does not mean only Chapter 14.10, but all of Title 14

¹⁶ SCC 14.10.020

¹⁷ SCC 14.02.010

¹⁸ SCC 14.02.040

¹⁹ SCC 14.10.010

County, Level 1 “Administrative Variances,” Level 2 “Hearing Examiner Variances,” and Level 3 “Board of Commissioner Variances.” To approve a variance, the deciding body must find:

- a.** The variance complies with any relevant variance criteria found in other sections of Skagit County Code.
- b.** The variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
- c.** The granting of the variance will be in harmony with the general purpose and intent of this Title and other applicable provisions of the Skagit County Code, and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.
- d.** For all Level II variances and all setback variances:
 - i.** The requested variance arises from special conditions and circumstances, including topographic or critical area constraints, which are peculiar to the land, structure, or building involved and which are not ordinarily found among other lands, structures, or buildings in the same district.
 - ii.** The special conditions and circumstances do not result from the actions of the applicant.
 - iii.** Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title and SCC Title 15.
 - iv.** The granting of the variance requested will not confer on the applicant any special privilege that is denied by this Title and SCC Title 15 to other lands, structures, or buildings in the same district.²⁰

As the same basis that requires the Critical Areas Variance is a violation of the standards of Title 14, a satisfaction of the 14.10 variance requirements are required for the proposed use.

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable general variance criteria.

Specifically, this project would utilize the property as a single-family residence, which will be consistent with the existing Rural Intermediate zoning designation; and embraces and carries forwards the goals in the SCP of using RI zoning “to provide and protect land for residential living in a rural

²⁰ SCC 14.10.040

atmosphere, taking priority over, but not precluding, limited non-residential uses appropriate to the density and character of this designation...”²¹

Consequently, subject to conditions of approval, having met the General Variance criteria, the underlying Critical Areas Variance should be approved.

V.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Zoning Variance, Shoreline Variance, and a Critical Areas Variance permit as described in the Staff Report shall be granted to the applicant Conor Keilty to replace a single-family residence on a waterfront lot, at a site addressed as 14341 Jura Drive, Anacortes, WA, subject to the following conditions:

1. An approved protected critical area site plan showing the reduced shoreline buffer and the geological hazard must be recorded with the Skagit County Auditor.
2. Compensatory mitigation must be installed, maintained, monitored, and inspected in accordance with the fish and wildlife habitat assessment and as shown on the site plan sheet A106 and as required by PDS review comments of submitted site plans and plant lists.
 - a. 2,442 square feet will be planted with native shrub/tree/ground cover plantings and 1,372 square feet will be planted with native shoreline meadow mix. The planted areas will be located between the residence and the OWHM as shown on the site plan.
 - b. Planting will include:
 - i. 70 grass, sedge, and rush plugs.
 - ii. 215 groundcover plants.
 - iii. 100 shrub species.
 - iv. 15 tree species.
 - v. Species may be substituted based on availability and PDS approval.

²¹ SCP at Chap. 3 “RI”, Policy 3C-1.4

- c. Remove the concrete pad from the buffer area southeast of the residence.
 - d. An as-built report must be submitted upon installation of the mitigation plantings.
 - e. Monitoring and maintenance reports must be submitted in years 1, 3, & 5 after mitigation installation.
 - f. Installation and maintenance of the mitigation area will be subject to inspections by PDS staff for a period of five years.
 - g. If mitigation plantings are not maintained the inspection and reporting period may be extended.
3. All other required permits for the project must be obtained and the conditions of those permits must be met.
4. An inadvertent discovery plan must be prepared and kept onsite at all times. All owners and contractors should be familiar with its contents and know where to find it. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Local Government Archaeologist, 360-586-3088) and the following Nations' Tribal Historic Preservation Offices should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s):
- a. Upper Skagit Indian Tribe
Scott Schuyler, Cultural Resources
sschuyler@upperskagit.com Phone: 360-854-7009
 - b. Swinomish Indian Tribal Community
Josephine Jefferson, THPO
jjefferson@swinomish.nsn.us Phone: 360-466-7352
 - c. Samish Indian Nation
Jackie Ferry, THPO
jferry@samishtribe.nsn.us Phone 360-2936404 ext. 126
5. The critical areas variance will expire if the use or activity for which it is granted is not commenced within three years of final approval by the Approving Authority. Knowledge of the expiration date is the responsibility of the applicant. The shoreline variance activities must begin within two years of the final approval date and be completed within five years of the final approval date.

NOTICE OF POTENTIAL REVOCATION & PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation.

Complaints regarding a violation of this permit's conditions should be filed with Skagit County Planning and Development Services. Violations of permit conditions may result in revocation (or modification) of the permit, administrative action under SCC 14.44 (including monetary penalties), and the violations being declared a public nuisance.

Critical Areas Variance Warnings

A variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval by the Approving Authority. Knowledge of the expiration date is the responsibility of the applicant.²²

Shoreline Warnings

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL THIRTY (30) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW 90.58.140(6) OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY (30) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C) and WAC 173-27-190.

Any shoreline substantial development, conditional use or variance permit may be rescinded by Skagit County and/or the Department of Ecology upon the finding that a permittee is in non-compliance with the permit and any conditions, terms or standards attached thereto. Procedure shall follow those outlined in SMMP §9.13.

FURTHER, in addition to incurring civil liability under SCC Ch. 14.44 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by

²² SCC 14.24.140(6)

both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000.

Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any County requirements other than the requirement to obtain a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions thereof.

Pursuant to WAC 173-27-190(2) this permit shall expire within two years of the date of its approval and a new permit will be required if the permittee fails to make substantial progress toward completion of the project for which it was approved. Pursuant to WAC 173-27-190(3) it shall expire if the project is not completed within five years of the date of the approval, unless the permittee has requested a review, and upon good cause shown, been granted an extension of the permit.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE SKAGIT COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to the Skagit County Board of Commissioners pursuant to the provisions of SCC 14.06.110. The appellant shall file a written notice of appeal within 14 calendar days of the final decision of the hearing examiner, as provided in SCC 14.06.110(13) or SCC 14.06.120(9), as applicable; for shoreline permit applications, by filing notice of appeal within five days of the decision.

More detailed information about reconsideration and appeal procedures are contained in the Skagit County Code Title 14.06 and which is available at <https://www.codepublishing.com/WA/SkagitCounty/>

DATED April 2, 2025,



Rajeev D. Majumdar
Skagit County Hearing Examiner