

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicants:** James and Kathryn Jensen
100 Eldorado Way
Chelan, WA 98816
- Request:** Shoreline Variance, PL17-0509
- Location:** On Channel Drive near LaConner. The property is located in the NE1/4 Sec. 24, T34N, R2E, W.M.
- Shoreline Designation:** Rural Residential
- Summary of Proposal:** To build a new single-family residence and install a septic system. The project meets the relevant setback from Channel Drive, the height limit and side setbacks. The proposal does not meet the 50-foot shore setback and the 30% maximum developed area limit. The request is to locate the new home 26 feet from the Ordinary High Water Mark (OHWM) and to have a developed area of 45%.
- SEPA Compliance:** Exempt
- Public Hearing:** March 28, 2018. Testimony by Planning and Development Services (PDS) staff, the new owner and two members of the public.
- Decision/Date** The application is approved, subject to conditions. April 6, 2018
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 5 days of this decision. Appeal is to the County Commissioners by filing with PDS within 5 days of this decision, or decision on reconsideration if applicable.
- Online Text:** The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. James and Kathryn Jensen have applied for a Shoreline Variance to allow the construction of a new home on the Swinomish Channel.
2. The site is at 15210 Channel Drive near LaConner. The property is located within NE1/4 Sec. 24, T34N, R2E, W.M. The Parcel numbers are P69430 and P7957.
3. The property is designated Rural Residential under the County's Shoreline Master Program (SMP). The upland along this shoreline area is the result of depositing sand and silt from dredging the channel.
4. The lot is about 130 feet deep and 80 feet wide and has been in this configuration since 1974, prior to the effective date of the local SMP. It is one of the few remaining undeveloped lots in the area. A rock bulkhead is located at the Ordinary High Water Mark (OHWM).
5. The variance is sought to allow the most waterward point of the home to be 26 feet from the Ordinary High Water Mark (OHWM) of the channel and to occupy a developed area of 45%. The SMP standards are a 50-foot setback and a 30% developed area.
6. The site of the proposal is within subdivision which has largely been built out. In the pre-SMP days when the subject lot was platted, the setback was 25 feet from the OHWM. Many of the neighboring homes have setbacks at or near this number.
7. Health regulations require that the septic system drainfield be located a minimum of 100 feet from surface water, limiting the home site to the area near to the shore.
8. The proposed home will be 26 feet from the OHWM at the south end and 33 feet from the OHWM at the north end, for an average shore setback of 29.5 feet. This will place the home behind the line of sight for the adjacent properties.
9. The new house will be comparable in size to neighboring homes. The developed area variance is necessitated by the dimensions of the lot—approximately 130 feet in depth and 80 feet in width.
10. The proposed developments is within a designated flood hazard area and will need to comply with building code standards for floodplain development.
11. In 2000, the Jensens sought and received a shoreline variance (PL00-0589) for a similar proposal. This approval expired before anything was built.
12. In connection with the prior variance, a Fish and Wildlife Assessment was prepared by Graham-Bunting Associates. This report contained recommendations for mitigation planting. A protected critical area site plan was filed and the buffer established at that time is still

effective. With the instant application, a landscaping plan, substantially similar to the prior approved plan, was submitted.

13. A septic permit has not yet been applied for, but County staff had no issues with the subject variance request. Potable water will be provided by the City of LaConner and a water approval or meter receipt will be required at the time of building permit submittal. Stormwater review called for low impact development techniques. Additional stormwater review will take place with the building permit application.

14. Notice of the application was made as required by law. One comment letter was received asking that the structure be no closer to adjoining property than allowed by the County and that the covenants developed by the homeowners association be followed. The project will meet the eight foot side setback. The County does not enforce private covenants.

15. During the course of permit processing, the property was sold to Joy and David Dolling, They testified at the hearing and agreed to comply with all conditions recommended in the County's Staff Report. They also agreed to comply with all protective covenants governing homes in the development. They stated that they have done what they could to protect neighbors' views.

16. The public testimony at the hearing did not deal with issues affecting the approval of the proposal. It was pointed out that the bulkhead at the northwest corner of the site has deteriorated and needs to be repaired.

17. The Staff analyzed the proposal under the terms of the local shoreline program (SMP) and determined that, as conditioned, the project will be consistent with applicable shoreline regulations and variance criteria. The Hearing Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SMP 10.02(3).
2. The application is exempt from the requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(e).
3. As conditioned, the proposed variances meet the relevant approval criteria. SMP 10.03(1).
4. The variances are in harmony with the general purpose and intent of the Skagit County Code.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.


CONDITIONS

1. The project shall be carried out as described in the application materials except as the same may be modified by these conditions.
2. All required permits shall be obtained and their conditions shall be adhered to.
3. The proposed landscaping plan shall be carried out. Mitigation planting must be installed prior to the final inspection of the proposed house.
4. The owners shall submit an as-built site plan of the mitigation planting as well as provide photographs of the installed plants. This submission shall be made with 30 days of plant installation.
5. All mitigation plants shall maintain a survival rate of 100% following the first year and 80% following years three and five. If plants do not meet these survival rates, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.
6. The owners and their contractors shall comply with all Skagit County stormwater management requirements, including temporary erosion/sedimentation control measures (Chapter 14.32 SCC).
7. The owners and their contractors shall comply with State water quality regulations for surface and ground water (Chapters 173-200 and 173-201A WAC) and with maximum environmental noise levels (Chapter 173-60 WAC).
8. The owners and their contractors shall comply with all other applicable State and local regulations.
9. The owners shall submit a copy of this decision with the building permit application.
10. The project shall be commenced within two (2) years of the final approval of the shoreline variance and completed within five (5) years thereof.
11. If any modification of the subject project is proposed, Planning and Development Services (PDS) shall be notified prior to the start of construction.
12. Failure to comply with any condition may result in permit revocation.

ORDER

The applications for a Shoreline Variance (PL17-0509) is approved, subject to the conditions set forth above.

SO ORDERED, this 6th day of April, 2018.



Wick Dufford, Hearing Examiner

Transmitted to Applicants, new owners, Staff, and interested parties, April 6, 2018.