

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: John Bame
15763 Yokeko Drive
Anacortes, WA 98221

File Nos: PL-04-0657 (Shorelines)
PL-04-0853 (Zoning)

Requests: Shoreline Substantial Development and Variance Permit
Reduction of Zoning Side Setback

Location: On the shore of Deception Pass at 15892 Yokeko Drive.
The property is within a portion of Sec. 24, T34N, R1E,
W.M. (Parcels P73457 and P19634.)

Shoreline Designation: Rural Residential

Summary of Proposal: To repair and modestly expand an existing float and to
install a ramp and pier to access the float. Existing
concrete pilings within the side setback will be
used. The resulting structure will exceed the length and
height limits of the local Shoreline Master Program.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on May 11, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. John Bame (applicant) seeks to repair and expand an existing float and to connect it to land with a gangway and pier. The structure is to be located on the shore of Quiet Cove on Deception Pass.

2. The project will extend from a waterfront lot at 15892 Yokeko Drive, within a portion of Sec. 24, T34N, R1E, W.M. The zoning is Rural Intermediate. The shoreline environment designation is Rural Residential.

3. The subject property consists of a tideland parcel (P19634) and an upland parcel (P3457). The upland parcel is a pipe-stem lot that is only 35 feet wide at the shoreline. It is adjacent to the tideland parcel which extends out into the water at the 35-foot width.

4. The structure was originally permitted as a pier, ramp, and float in 1981 by U.S. Army Corps of Engineers Permit #071-0YB-2-007088. Skagit County issued a shorelines exemption for the undertaking at the time. The permitted structure was never completed. However, the wooden pilings for the float, the float itself, and the concrete pilings for the pier and ramp were installed. The 1981 permit has expired.

5. Because the old float was rotting and damaged, the applicant replaced it in July of 2004. He did this without acquiring a shorelines exemption from the County. The north end of the float was slightly expanded from the original design to allow for the future placement of the ramp. The basic float is 10' by 40'. There is a 3' by 10' expansion on the inboard side to provide additional gangway support. The float is held in place by the existing wooden pilings.

6. The new structure has been professionally designed by Transpac Marinas. The pier will be a pre-manufactured timber construct measuring 6' by 24'. The ramp or gangway will be a 3' by 64' piece of welded aluminum inserted as a clear span from the end of the pier to the float. The pre-existing concrete pilings will be used for the pier. Because all supporting elements for the pier and ramp are already in place, no work will be conducted on the seabed below the Ordinary High Water Mark (OHWM). Materials will be barged to the site and the installation process will not require the barge to go aground,

7. Overall the structure will extend about 85 feet from the OHWM. The height of the proposed pier will be 3.5 to 4.0 feet above the OHWM. There is one dock located within 300 feet of the property that reaches approximately 50 feet seaward from the OHWM.

8. The length of the pier and ramp has been dictated by the placement of the existing concrete support footings and the position of the float. The pier and ramp widths are the narrowest functional widths possible. The pier will be preserved with non-toxic ACZA and kiln-dried after treatment. The ramp deck will be of fiberglass grating, providing 60% ambient light permeability.

9. Indications are that the float was originally positioned where it is so that it would not ground at the lowest tidal levels. This design allows moorage at all tidal conditions and protects the seabed. The pilings for the float were driven into the sandy bottom and could not be located closer in because of the rocky shoreline geology.

10. A Fish and Wildlife Habitat Assessment, prepared by Aqua-Terr Systems, was submitted for this project on February 1, 2005, pursuant to the Skagit County Critical Areas Ordinance. There is a rocky shoreline that extends onto a sand subsurface substrate where the dock lies. The Assessment identified a reduction of direct impacts to the shoreline habitat by eliminating the need to drag a boat over the rocky tidelands and trampling of flora and fauna to get access to the float. No eelgrass was identified at the site. As designed, the pier and ramp are high enough above the substrate to minimize any shading effects. Overall, the Assessment found that the project will have minimal impact on fish and wildlife.

11. Four comment letters were received from surrounding property owners. All were in support of the proposal. At the hearing, public testimony was given by a neighbor, who favored the project and testified that more docks will probably not be built in the cove. The property owner who would be most affected by the dock is the adjacent owner to the south, Dave Cortelyou. He is a strong proponent of the project. The applicant has indicated that Mr. Cortelyou and other neighbors would be allowed access to the dock.

12. The Department of Ecology, in commenting, encouraged the County to require joint-use of the dock as a permit condition. Consulted County agencies had no comments.

13. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued for the proposal on February 8, 2005. The conditions of the MDNS were standard admonitions to comply with design and study recommendations and with existing ordinances and statutes. The MDNS was not appealed.

14. The County Code at SCC 14.16.300(5)(a)(ii) establishes an 8-foot side setback within the Rural Intermediate zone. The placement of the pre-existing footings will require this structure to approach within three feet of the side property line. The applicant has sought a zoning setback reduction under SCC 14.16.810(4) to allow this.

15. The local Shoreline Master Program (SMP) also establishes an 8-foot side yard setback. SMP 7.10(B)(4)(b). A Shoreline Variance is sought to allow a reduction of the shoreline side setback to three feet.

16. The SMP contains length and height limits for docks. If there are existing docks within 300 feet of side property lines, private docks shall be no longer than the average length of those docks as measured from the OHWM. The height of docks is not to exceed three feet above the OHWM on the landward side. SMP 7.10(B)(5)(a),(b). The applicant has requested variances from the SMP dock length and height restrictions.

17. There are currently two other docks in Quiet Cove. Because of the topography of the shore, and conditions of currents and storm exposure, the Examiner is persuaded that additional docks are not likely to be built in the cove.

18. Under SMP 10.03(1), variances from the SMP for construction landward of the OHWM must meet the following criteria:

- a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for 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 the adjacent properties or the shoreline environment designation.
- d. The variance granted 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. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

19. The Staff Report contains an excellent and thorough discussion of how the subject application complies with the above variance criteria. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

20. The earlier approval of a dock at this locale and the partial construction of the same constitute a type of special circumstance that provides a basis for allowing this proposal to go forward. The existing concrete pilings were placed in a strategic location on the shore and are still in excellent condition. The height of the pier was designed to conform to the topography allowing access to the foot path just above the rocky shore. The length was dictated by site-specific topographic and tidal conditions and ensures the least environmental damage. The current design in its sensitivity to environmental concerns constitutes an improvement over the original plans.

21. The side setback reduction is supported by history, lot configuration, and topography. Water access through a dock is a reasonable use of this property which would be adversely impacted if the requested reduction is not granted. Public health, safety and welfare will be maintained.

22. 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.

2. The policies of the Shoreline Management Act (RCW 90.58.020) and the implementing State regulations (Chapter 173-27 WAC) are adequately carried out in this case by the provisions of the local master program.

3. Private docks are a permitted use in the Rural Residential shoreline environment, subject to the general regulations. SMP 7.10(2)(A)(2).

4. By policy, mooring buoys and joint use structures are preferred over the construction of shoreline docks. See SMP 7.10(1)(A)(4),(7). However, these preferences are not mandatory and in this case, the reasons for allowing completion of this previously authorized single-user dock are more than adequate. The use of a dinghy has been shown to be inadequate and damaging at this location. The advantages of a joint-use structure have not been demonstrated.

5. Requiring joint-use of docks is a means to reduce the number of docks that might otherwise be built. In this case, the facts show that the proliferation of single-user docks in the immediate area is not a likelihood. Moreover, it appears that there is cooperation among neighbors and that a joint-use situation will develop de facto. Under the circumstances, a requirement for joint use would serve no useful purpose.

6. Except for the dimensional matters addressed in the variances, the proposed dock is consistent with the applicable SMP policies and regulations. The criteria for granting a Shoreline Substantial Development Permit are met. SMP 9.02(1).

7. Normally a reduction of zoning setbacks under SCC 14.16.810(4) is handled administratively. In this case, however, because of the concurrent requests for shoreline approvals, consideration of the zoning setback reduction was consolidated with the shoreline applications before the Hearing Examiner. See SCC 14.06.060.

8. The application satisfies the requirements for a reduction of the zoning side setback. SCC 14.16.810(4). The application, as conditioned below, is likewise consistent with the criteria for the shoreline variances sought. SMP 10.03(1).

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

CONDITIONS

1. The project shall be constructed as depicted in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other required permits and approvals and abide by the conditions thereof.

3. The applicant shall comply with the conditions of the Mitigated Determination of Non-Significance issued on February 8, 2005.

4. The float(s) installed prior to the installation of the replacement float in July of 2004 shall be removed. The replacement float shall remain.

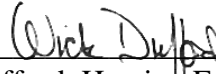
5. The project shall be started within two (2) years of the date of the final approval of this permit and shall be finished within five (5) years thereof or the shoreline permit will become void.

6. Construction shall not be undertaken until the shoreline permit decisions herein become final.

7. Failure to comply with any condition of this permit may result in its revocation.

DECISION

The requested zoning side setback reduction is approved. The Shoreline Substantial Development and Variance Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: June 6, 2005

Date Transmitted to Applicant: June 6, 2005

RECONSIDERATION/APPEAL (ZONING DECISION)

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services 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 Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

RECONSIDERATION/APPEAL (SHORELINES DECISIONS)

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

DEPARTMENT OF ECOLOGY REVIEW

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.