

BEFORE THE HEARING EXAMINER OF SKAGIT COUNTY

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Matthew and Alexandra McCafferty
2746 NE 89th Street
Seattle, WA 98115

Agent: Jackie Chriest
33688 Bamboo Lane
Mount Vernon, WA 98274

File No: PL04-0828

Request: Shoreline Variance

Location: 32753 South Shore Drive on the shore of Lake
Cavanaugh, within a portion of Sec. 28, T33N,
R6E, W.M.

Shoreline Designation: Rural Residential

Summary of Proposal: To replace an existing cabin with a new single-family residence, containing a footprint of approximately 1,200 square feet and a 300 square foot deck. The proposed house and deck will remain at the same distance of 22 feet from the Ordinary High Water Mark (OHWM) as the existing cabin.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public Hearing on March 23, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Matthew and Alexandra McCafferty (applicants) seek a Shoreline Variance for the replacement of a cabin with a new residence on the shore of Lake Cavanaugh.
2. The property is located at 32753 South Shore Drive. It is Lot 75, Block 1, Lake Cavanaugh Subdivision #3, within a portion of Sec. 28, T33N, R6E, W.M.
3. The shoreline environment designation for the area is Rural Residential.
4. The existing cabin and deck, built in the late '40's or early '50's, covers approximately 1,000 square feet. The cabin has no plumbing and is heated with a pellet stove. The existing structure is 22 feet from the Ordinary High Water Mark (OHWM) of the lake. The applicants intend to build a new home on a slightly larger footprint the same distance from the shore.
5. The new home will have a footprint of approximately 1,200 square feet and a 300-square-foot deck. It will feature indoor plumbing and other modern amenities. The total site coverage proposed will be approximately 17% -- well within the 30% limitation of the Shoreline Master Program (SMP). The height will be about 30 feet which equals the applicable height limit.
6. The property contains an existing bulkhead located at the OHWM.
7. The lot is long and narrow – 40 to 60 feet wide and 228 feet long. Legal access is from a driveway that parallels the lake and enters the lot behind the house. This driveway isolates the front third from the rear two-thirds of the lot. The rear portion of the lot will be mostly taken up by the primary and reserve drainfield areas for the new septic system. The rear of the new home will extend a couple of feet into the current parking area on the legal driveway. The home cannot be placed further inland without covering the driveway/parking. The access facilities cannot be moved further inland because of the drainfield.
8. The shore setback established by the SMP for this lakeshore area is 50 feet. The applicants request a variance from the standard in order to put their new home in the same location relative to the shore as the old one.
9. The neighboring properties have shoreline setbacks ranging from 23 feet to 41 feet. (One property has a home located at 102 feet from the OHWM because a large rock prevented putting it closer.) The average of setbacks (excluding the outlier) is 29.6 feet. The neighboring homes all have plumbing and septic systems. Extensive photographic evidence was presented to show that the setback location of the proposed home will fit compatibly with the setbacks of the numerous other homes in the neighborhood.

10. A Fish and Wildlife Habitat Assessment was professionally prepared and submitted with the application. The Assessment identifies a very minor impact to the 50 foot fish and wildlife habitat buffer due to the 92-foot increase in building footprint. The area impacted is currently a lawn which provides poor to fair habitat value. The report recommends increasing the habitat value and offsetting the minor loss by planting additional native shrubs. It also recommends standard anti-erosion practices during construction. These recommendations are included as conditions of approval.

11. All of the 50-foot setback that is not occupied by the house and deck will be placed into a Protected Critical Area.

12. There was no correspondence critical of this proposal. Several neighbors wrote letters of support. There was no public testimony at the hearing.

13. The criteria for a Shoreline Variance are set forth a SMP 10.03. For developments landward of the OHWM, the requirements are:

- (a) That the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program.
- (b) That the hardship described in this section 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 the Shoreline Master Program, and not for example, from deed restrictions or the applicant's own actions;
- (c) That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment
- (d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and
- (v) That the public interest will suffer no substantial detriment.

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

14. The Staff Report analyzes the proposal against these criteria and determines that, as conditioned, the project will be consistent with them. 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.

15. 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 subject matter of this proceeding.

2. The proposal is categorically exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAX 197-11-800(6)(b).

3. The project, as conditioned below, will be consistent with the criteria for a Shoreline Variance. SMP 10.03.

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

CONDITIONS

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

2. The applicant shall obtain a County building permit and all other necessary approvals. A copy of this decision shall be submitted with the building permit application.

3. The shore setback shall be a minimum of 22 feet landward of the OHWM.

4. A Protected Critical Area (PCA) shall be established within the 50-foot shore setback area not occupied by the house and deck. A drawing of the PCA shall be recorded with the County Auditor and submitted to Planning and Development Services with the building permit application.

5. The applicant shall comply with all relevant County ordinances and State statutes and rules, including the local Shoreline Master Program, the Shoreline Management Act, the Critical Areas Ordinance, and State Surface and Ground Water Quality Criteria. Temporary erosion and sedimentation control measures shall be in accordance with Chapter 14.32, the Drainage Ordinance.

6. The applicant shall comply with all recommendations of the Fish and Wildlife Habitat Assessment prepared by Edison Engineering, dated November 11, 2004:

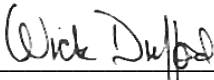
- a. Planting of 13 native shrubs within 5 foot strips along the northeast and southeast property lines.
- b. Replace any additional shrubs removed during construction.
- c. Silt fences should be erected downgradient of and within ten feet of any proposed soil disturbance. The silt fence will set clearing limits and minimize transport of sediments toward the lake. Silt fence should be removed following revegetation of the site.
- d. Stockpiled soils should be covered with polyethylene sheeting if they are to remain on site more than 24 hours.
- e. No soils or construction or demolition materials should be stored waterward of the silt fence.
- f. Drainage from roof downspouts should be conducted to the shore through the bulkhead or at the southeast end of the bulkhead.
- g. Concrete footings, slabs, and all outdoor brickwork should be covered with polyethylene sheeting if rain is likely to occur within 72 hours of pouring the concrete. Concrete spills or runoff may be neutralized by the application of sodium bicarbonate (baking soda) to lower the pH.
- h. All construction at the site should be conducted during the dry season (between the end of May and the end of September) to minimize erosion and sedimentation transport brought on by seasonal rains (this applies to activities involving soil disturbance.)

7. Construction shall be commenced within two years and completed within five years of the effective date of the shoreline permit (WAC 173-27-090).

8. Failure to comply with any conditions of this permit may result in its revocation.

DECISION

The requested Shoreline Variance is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: April 13, 2005.

Date Transmitted to Applicant: April 13, 2005

RECONSIDERATION/APPEAL

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.

DEPARTMENT OF ECOLOGY REVIEW

If this decision becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.