

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Robert E. Pare
14114 Doser Street
Edison, WA 98232

File No: PL04-0851

Request: Shorelines Variance

Location: 14114 Doser Street in Edison. The project is located within a portion of the SW1/4 Sec. 33, T36N, R3E, W.M.

Shorelines Designation: Rural

Summary of Proposal: To legitimize a small addition to an existing residence that is within the shore setback from the Edison Slough. The addition does not cause non-conformity with the existing setback to increase.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on March 9, 2005.

Decision: The Variance is approved, subject to conditions.

FINDINGS OF FACT

1. Robert Pare (applicant) seeks permission for a small addition to an existing house within the shore setback area on the northern side of Edison Slough.
2. The house is at 14114 Doser Street in Edison. The location is within the SW1/4 Sec. 33, T36N, R3E, W.M. The parcel number is P73006. The Shoreline Master Program designation is Rural.
3. The project alters the cold storage room to become an open part of the existing kitchen. The dimensions of the cold storage room are 7'8" by 9'11". An infill of one corner of less than 10 square feet is involved, along with relocating the rear door and making some modifications to the roof line.
4. The area added simply regularizes the shape of the structure. The structure's distance from the Ordinary High Water Mark (OHWM) of the slough has not changed.
5. The additional space cannot reasonably be placed outside the setback. Adding to the 1895 residence's front or side, outside the setback would not be appropriate to the historic style. The existing storeroom was added circa 1918. The remodel design which adds slightly to that area is the most sensitive structural solution to maintaining the historical integrity of the house.
6. The average of setbacks of residences in this area is approximately 62 feet from the OHWM. The subject residence is about 51 feet from the OHWM. Thus, the shore setback is non-conforming under the local Shoreline Master Program (SMP). See Sec. 7.13, Table RD. The variance application seeks to enlarge the non-conforming structure by a de minimis amount.
7. The shoreline adjacent to Edison Slough is developed primarily with either single family residences or commercial uses. Much of this development pre-dates the current shoreline regulations.
8. The application was filed on November 29, 2004. A Notice of Development was published, posted and mailed as required by regulation. There were no public comments during the processing or at the public hearing.
9. The applicant submitted a Fish and Wildlife Habitat Assessment, dated January 30, 2005. The Assessment concludes that the project does not affect the habitat at the shore. Compliance with critical areas regulations can be achieved by placing the shore setback area into a Protected Critical Area (PCA).

10. The SMP, in general, forbids the enlargement of non-conforming structures on shorelines. Sec. 12.02. However, such enlargement may be permitted by variance in exceptional cases if the Hearing Examiner determines

“that the enlargement . . . of the non-conforming . . . structures on shorelines can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment and purpose of this Program and the Act, and that to deny the enlargement . . . in the non-conformity would constitute a hardship greater than the public benefit derived from denial of the non-conformity” Sec. 12.04

In this case, the Examiner so finds.

11. The applicant’s intent is to renovate and preserve the historic home and to re-create gardens of the Mung family, owners from the 1920’s. The small addition is behind a landmark monkey puzzle tree and an old apple tree and is screened by the slough’s dike so that is barely visible from outside the property. New plantings use many old variety roses and some native species to provide a habitat for smaller birds and a habitat screen for waterfowl. The overall effect is not harmful to the public or to the shoreline.

12. Variances for development located landward of the OHWM may be granted under SMP Sec.10.03 if all the following criteria are met:

- a. That the strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with 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 variance authorized 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. That the public interest will suffer no substantial detrimental effect.

In the granting of variances consideration must be given to the cumulative impact of additional requests for like actions in the area.

13. The Staff Report analyzes the application in light of the above criteria and determines that, as conditioned, the project is consistent with them. 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.

14. It is reasonable to make improvements in this historic home to make it suitable for modern living. The minor infill of an inside corner involved here is appropriate to this end. To apply the strict letter of the setback regulations would significantly interfere with reasonable use. The setback non-conformity is a product of the historical building pattern and is thus a condition of the property and not a result of the applicant's actions. The change is minimal. There is no identified impact on adjacent properties.

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 the subject matter of this proceeding. SMP Sec. 10.02(3).

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

3. The findings support a conclusion that the project, as conditioned, meets the variance requirements of SMP Secs.12.04 and 10.03.

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

CONDITIONS

1. The applicant shall obtain all other required permits and shall comply with the conditions thereof.

2. The applicant shall comply with all applicable state and local regulations.

3. The project shall conform to the plans and other materials submitted with the application.

4. The shore setback area shall be placed into a protected critical area (PCA) per the requirements of SCC 14.24.170. The PCA shall be recorded. The PCA may be recorded with the building permit application BP04-1258.

5. Authorization to conduct development activities shall terminate five years after the effective date of the shoreline variance permit.

6. Failure to comply with any permit conditions may result in permit revocation.

DECISION

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



Wick Dufford, Hearing Examiner

Date of Action: March 23, 2005

Date Transmitted to Applicant: March 23, 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.