

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Rocky and Cynthia Kuehny
1744 Walnut Ave. S.W.
Seattle, WA 98116

File Nos: PL05-0237 and PL05-0236

Requests: Shoreline Variance Permit
Front Setback Reduction

Location: 16804 Chilberg Avenue, on the shores of Skagit Bay near
La Conner, within a portion of Sec. 27, T34N, R2E, W.M.

Land Use Designations: Shoreline: Rural Residential
Zoning: Swinomish Urban Growth Area Residential

Summary of Proposal: To build an approximately 1,400-square-foot two-story
attached accessory dwelling unit and an approximately
539-square-foot addition to an existing residence.
The accessory dwelling unit would be about 16 feet from
the front property line. The garage area of the accessory
dwelling unit would be about 20 feet from the front
property line. The accessory dwelling unit would be
about 40 feet from the Ordinary High Water Mark of
the bay.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on June 28, 2006.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Rocky and Cynthia Kuehny (applicants) seek authorization for reduced setbacks in order to building an addition to their modest house and an attached accessory dwelling unit on their property on the shore of Skagit Bay.

2. The property is located at 16804 Chilberg Avenue near La Conner, within a portion of Sec. 27, T34N, R2E, W.M. There are two parcel numbers: P69690 and P69692. The shoreline designation is Rural Residential. The Comprehensive Plan/Zoning district is Swinomish Urban Growth Area Residential. Hope Island lies approximately ½ mile off shore to the west.

3. The property consists of adjoining lots that were required to be aggregated under code provisions in force in 1996. Under the current code, the lots could be considered as separate building lots. The applicants have chosen to develop the property as one lot.

4. The existing house has a main floor footprint of 1,386 square feet and no garage. There is a partial basement, but it is very small with a low ceiling because the ground is by and large solid rock. The addition to the house will comprise 539 square feet at the northern end of the property. This addition will conform to required setbacks.

5. The accessory dwelling unit will be built to the south, over a proposed garage/workshop – the overall structure including about 1,400 square feet. The new dwelling unit is described as a “mother-in-law apartment”. It would provide space for the housing and care of the applicants’ aging parents, if and when they require it.

6. Though the address is Chilberg Avenue, access to the property is in fact via a gravel easement along the property line, lying on adjoining property to the east.

7. The accessory dwelling unit will be situated approximately 16 feet from the front (interior) property line. The garage portion will be about 20 feet from the same line. The accessory dwelling unit will be approximately 40 feet from the Ordinary High Water Mark (OHWM) of the bay.

8. Under the Unified Development Code, the standard front setback in this district is 25 feet. Under the local Shoreline Master Program (SMP), the standard shore setback in this designation is 50 feet. The irregularity of the shore imparts an irregular shape to the property which severely limits the buildable area on the lots if the standard setbacks are observed. The existing house is non-conforming as to setbacks. The applicants have applied for lesser setbacks for their accessory dwelling unit in order to accommodate reasonable development of the property.

9. The property is served by Skagit County Sewer District 1. SneeOosh Land Company provides water.

10. The property has a medium high bank. The area to be developed is relatively flat and in grass. There are steps to the beach on the now-undeveloped lot. A Protected Critical Area (PCA) was established in June of 2003, extending inland 35 feet from the OHWM. The proposed accessory structure will be outside the PCA.

11. There are no wetlands or streams on the property. A Fish and Wildlife Report prepared by Skagit Wetlands and Critical Areas, Inc., concluded that the project will not adversely affect the fish and wildlife associated with Skagit Bay or the shoreline environment.

12. The property falls under the jurisdiction of the Bald Eagle Management Plan for Skagit County which limits tree removal on the site. The proposal will not conflict with the Plan.

13. The Hope Island Inn is located adjacent to the south. To the north are properties developed with residential homes. The neighboring homes are considerably closer to the shore than the 50 foot setback. Within 300 feet, the average setback is around 13 feet, with the largest setback being 30 feet. The proposed development will not interfere with any water view.

14. Mr. Kuehny is a carpenter/designer. He intends to finish the proposed improvements following a "Cape Cod/English waterfront bungalow theme." His opinion is that the project will be an aesthetic asset to the community.

15. The application was circulated to various County Departments. None had concerns with the project as proposed.

16. There was no public comment on the proposal.

17. SCC 14.16.810(4) provides for the administrative reduction of setbacks where topography, critical areas, or lot size and configuration impact the reasonable development of the property. A determination must be made that the public health, safety, and welfare will be maintained.

18. The Examiner finds that topography and lot configuration do indeed impact the reasonable development of the subject property. Public health, safety and welfare will be unaffected by the proposed development.

19. Variances from the Skagit County Shoreline Management Master Program for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

- 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.

20. The Staff Report analyzes the application in light of the above criteria and determines that, as conditioned, the proposal will be consistent with them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

21. The project in effect splits the setback intrusion on either side in order to create a reasonably sized residence with an accessory dwelling unit. The proposal is for a reasonable use of the property which could not be accomplished if the standard setbacks were observed. The setback intrusions will be compatible with existing development in the area.

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. SMP 10.02. The administrative setback reduction is consolidated with the shoreline permit for Hearing Examiner decision pursuant to SCC 14.06.060.

2. The proposal meets the requirements for an administrative zoning setback reduction. SCC 14.16.810(4).

3. As conditioned, the project is consistent with the applicable criteria for a shoreline variance. SMP 10.03(1).

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

CONDITIONS

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

2. The applicants shall obtain all necessary permits and approvals prior to constructions and shall abide by the conditions of same.

3. If modification of the proposal is required to meet County requirements other than setback requirements, the applicants shall obtain the approval thereof from Planning and Development Services.

4. The garage under the accessory dwelling unit shall be located at least 20 feet from the front property line.

5. The applicants shall comply with the development restrictions applicable to the existing Protected Critical Area on the site. Plantings identified in the mitigation plan shall be made and maintained.

6. The applicants shall comply with the applicable conditions set forth in the Bald Eagle Management Plan for Skagit County, as developed by the State Department of Fish and Wildlife.

7. During construction, the applicants shall employ best management practices to control erosion and sedimentation. Upon completion of the project, they shall ensure that disturbed areas are restored to preconstruction condition.

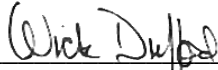
8. A copy of this decision shall be submitted with the building permit application.

9. Construction shall commence within two years of the Department of Ecology's approval and shall be completed within five years thereof or the permit shall become void.

10. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Shoreline Variance Permit and the requested zoning setback reduction are approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: July 17, 2006

Date Transmitted to Applicants: July 17, 2006

RECONSIDERATION/APPEAL - SHORELINES

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.

RECONSIDERATION/APPEAL-ZONING

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.