

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Donald and Jean Berkey
2503 60th Street SE
Everett, WA 98203

File No: PL05-0914

Request: Shoreline Variance

Location: 15885 Yokeko Drive, on the north shore of Deception Pass,
within a portion of Sec 24, T34N, R1E, W.M.

Parcel No: P64867

Shoreline Designation: Rural Residential

Summary of Proposal: To replace an existing single-family residence, relocate and upgrade the on-site sewage system and build an attached garage. The new structure would be located in the same area as the existing residence, approximately 18 feet landward of the ordinary high water mark (OHWM) and the same distance (3 feet) from the western sideyard property line. Site coverage, shore and sideyard setback variances are requested.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on November 4, 2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Donald and Jean Berkey seek to replace a cabin built around 1900 with a modern solar home. They request variances to allow them to maintain the same shore setback and the same sideyard setback as the present residence. Lot coverage will be reduced from the existing 35%.

2. The location is Parcel No. P64867 at 15885 Yokeko Drive on the north shore of Deception Pass. The property is within a portion of Sec. 24, T34N, R1E., W.M.

3. The shoreline designation of the property is Rural Residential. The area is on a Shoreline of Statewide Significance. The lot is approximately 75 feet wide and just over 200 feet in length.

4. The property presently has a two bedroom residence, a two car garage and a covered two-bay carport. The main cabin covers approximately 960 square feet. The existing lot coverage is approximately 35%

5. The proposal is for a new residence in the same position as the old one, at about 18 feet landward from the OHWM. The new residence would be about 2,000 square feet in area and would extend landward farther than the existing structure.

6. The applicants' original plans raised concerns from the neighbors to the west. After prolonged discussions, the applicants have changed their initial proposal for a detached garage/ADU and have submitted plans that call for removing the present carport and garage, and attaching a new garage to the residence. The new attached garage will be the same distance (3 feet) from the side boundary as before, but the removal of the carport will eliminate a structure along that same boundary. The net effect will be to reduce impervious surface.

7. The standard shore setback in this environment is 50 feet. The standard side setback is eight feet. The proposal to keep the existing setbacks arises from a desire to use existing contours and elevations to minimize grading and terrain changes, as well as to preserve existing trees.

8. The applicant has submitted revised a calculation for site coverage based on the revised design. The new calculation is 29.6% of the site. The maximum allowable site coverage is 30%. Since no final construction drawings are available and the site coverage calculation is so close to 30%, the Staff recommends that this variance request continue to include consideration for site coverage that may exceed 30%.

9. The project includes the installation of a new septic system. The existing drain field is less than 15 feet from the OHWM. The new drain field will be in the area from which the

carport has been removed. The new drip system will be located more than 175 feet from the OHWM, thus reducing risks to water quality.

10. The neighborhood is well developed along the shoreline. The pattern is narrow lots and structures within the side and shore setbacks. The proposed project would merely maintain the status quo in this regard.

11. Three neighborhood couples wrote letters in favor of the project. (One testified.) They noted that all of the lots in the area are long and narrow and that most, if not all, have side and shore setback non-conformities. They were particularly supportive of the plans to modernize the septic system and move it farther from the water. The neighbors to the west remain opposed to the reduced side-yard setback, but welcome other improvements to the property.

12. The applicants state that achieving the standard eight-foot side-yard setback would require relocation of the existing driveway, limit turning radius, and result in the loss of mature trees. They particularly wish to provide adequate on-site parking in order to avoid the congestion and hazard of forcing parking onto the narrow street.

13. A Fish and Wildlife Assessment was completed for the proposal and concluded that impacts of the project on the shore setback and critical areas buffer could be offset by planting of the open areas and retention of the existing well-established trees and vegetation on the site.

14. A Geologic Hazard Site Assessment was prepared. It determined that there are no slope stability, geologic or seismic hazards on the site.

15. The application was circulated to various County departments. Once the plans for the new septic system were included, they had no objections. Planning Staff noted that an administrative reduction in setbacks is required for the proposed three-foot side setback. The applicant has applied for this and it is being processed separately.

16. The criteria for Shoreline Variances landward of the OHWM are set forth in the Shoreline Master Program (SMP) at Section 10.03(1), as follows:

- (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 detriment.

17. The application of the SMP setbacks and lot coverage requirements would significantly interfere with a proposed reasonable use that would replace an outdated existing house and patio with a modern energy efficient dwelling, allow for an upgraded septic system, and result in the reduction of impervious surface. To conform to the 50 setback would require the removal of existing rock walls and changes in existing contours of the terraced lot. Permitting the side-yard setback variance will allow use of the existing driveway in its present location and avoid removal of mature trees, while preserving adequate off-street parking. The proposal closely approximates the lot coverage standard, improving on the existing situation.

18. The variances are needed in order to cope with the restrictions imposed by the narrow lot and the topography of the site.

19. The project will be compatible with other developments in the area where variations from the setback standards are more the rule than the exception. The current setbacks will be maintained and thus adverse impacts to other properties will not be introduced. Because of the pattern of development in the neighborhood, the variances sought will not constitute a grant of special privilege.

20. The public interest will be served by the installation of the new septic system which will remove a current hazard to water quality, and by preservation of mature trees which provide habitat value.

21. 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(3).

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

3. The proposal is provides for long-term water quality benefits consistent with the preferences for Shoreline of Statewide Significance.

4. The proposal meets the relevant SMP variance criteria. SMP 10.03(1).
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

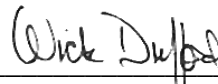
CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.
2. The applicant shall obtain any other required permits and abide by the conditions of same.
3. Temporary erosion, sedimentation and drainage control measures shall be in accordance with local, state and federal requirements. Such measures shall be in place prior to commencement of soil disturbance, and shall be maintained for the life of the construction activities.
4. Construction pursuant to this Shoreline Variance Permit shall commence within two (2) years of the issuance of the permit.
5. The final design shall limit site coverage to a maximum of 32% of the lot.
6. The applicant shall comply with all applicable State and local regulations, including the policies and regulations of the local Shoreline Master Program and the Shoreline Management Act.
7. The applicant shall comply with the recommendations found in the Fish and Wildlife Site Assessment.
8. Failure to comply with any condition may result in permit revocation.

DECISION

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

DONE this 1st day of December, 2009.



Wick Dufford, Hearing Examiner

RECONSIDERATION/APPEAL

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