

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS CONCLUSIONS AND DECISION**

**Applicant:** Dennis and Louise Conway  
8205 75<sup>th</sup> Street NE  
Marysville, WA 98270

**File No:** PL07-0317

**Request:** Shoreline Variance

**Location:** 33168 West Shore Drive on the shores of Lake  
Cavanaugh, within SW1/4 Sec. 22, T33N, R6E, W.M.

**Parcel No:** P66892

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To demolish and remove an existing cabin and shed and to replace them with a 2,316 square-foot, two-story, single family residence. The residence will include an approximately 360 square-foot deck on the water side of the house. The new deck and residence will be located 26 feet landward of the Ordinary High Water Mark (OHWM). The project will increase the shore setback from 15.6 feet to 26 feet and will increase the height of the structure to the 30-foot maximum.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on February 13, 2008.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Dennis and Louise Conway (applicants) seek a Shoreline Variance from the shore setback for a lot on Lake Cavanaugh. The standard setback is 50 feet from the Ordinary High Water Mark (OHWM). The applicants propose a 26-foot setback.
2. The subject property is located at 33168 West Shore Drive, within the SW1/4 Sec 22, T33N, R6E, W.M. The Parcel number is P66892. The shoreline environment designation is Rural Residential.
3. The lot (parcel P66892) measures 60 x 167 feet and occupies 0.23 acre. The property is located in a cove and the lot is not as deep as some others in the area. The topography of the lot slopes up (average 23%) to the north from the lake to the road.
4. The project involves the demolition of a 608 square-foot cabin and removal of a 160 square-foot storage shed/boat garage. The existing cabin is about 15.6 feet from the OHWM. The shed is at the water's edge.
5. These will be replaced by a 2,316 square-foot, three bedroom, two-story single family residence, with a foot-print of roughly 1,322 square feet. Attached to the rear of the house will be an approximately 528 square-foot garage. Beneath the two stories will be a 960 square-foot daylight basement. On the west side of the house and across about half of the water side will be an approximately 360 square-foot deck. The deck will extend seven feet off the front edge of the home. The proposed setback is to the deck. The intention is to provide a full-time residence in place of the present summer cabin
6. The slope of the lot will require some excavation to create the daylight basement. The height of the house from average grade will be 30 feet. Over the whole lot, the resulting developed area will be 28.1 percent. The project will meet relevant side setback, lot coverage and height restrictions. The lot coverage figure will be achieved by redoing the driveway to include pervious space between cement strips.
7. The lot's development is constrained by the existing drainfield which lies between the proposed home and West Shore Drive. A three-bedroom septic system was previously approved and installed. In order to build the new house, the septic tanks will probably need to be repositioned. The precise placement can be approved at the building permit stage.
8. The neighboring homes on either side have approved or existing 26-foot setbacks, so a common setback will be established for all three. The space needed for the effective operation of the drainfield simply does not allow the structures to be pushed back farther from the lake.

9. The proposed new home will have a timber framed look to blend in with the setting and the neighboring structures. Photos introduced into the record amply demonstrated the aesthetic compatibility of this proposal with other building in the vicinity.

10. A Fish and Wildlife Assessment, prepared by Edison Engineers, concluded that construction of the new residence will create less of an effect on the shore buffer than the current development, since the residence will be removed landward and less area within the buffer will be covered. The report recommended that the vegetation removed to make way for the new residence be transplanted to the slope between the house and the shore. Standard techniques to protect against erosion and siltation during construction were also recommended. A critical area site plan was prepared, showing a Protected Critical Area (PCA) over all of the un-built space within the 50-foot shore setback.

11. Testimony in support of the application was given by a neighbor who lives three lots to the east. She said that the proposal will improve the neighborhood and help to preserve the environment at the lake.

12. Variances from the Skagit County Shoreline Master Program (SMP) 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.

13. The Staff Report analyzes this request in light of the above criteria and determines that, as conditioned, the development will be 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. The Examiner takes notice of the many narrow and steep lots on Lake Cavanaugh, a situation which has created a development pattern where the 50-foot setback is more the exception than the rule. Proposals such as this, which increase the unoccupied shore area, are an improvement over the practices of the past.

15. The proposed permanent residence and garage are a reasonable use of the property consistent with the SMP's environment designation. To deny the proposal would significantly interfere with this use. The incursion into the setback is necessitated by the topography of the lot and the necessary maintenance of the existing on-site sewage disposal system. The development will be within the capacity of the existing system and therefore no cumulative adverse water quality impacts are anticipated.

16. 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 request is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6).

3. As conditioned, the proposal will be consistent with the criteria for approval of 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 described in the application materials and Staff Report, except as the same may be modified by these conditions.

2. The applicants shall obtain a building permit and receive any other necessary approvals. A copy of this decision shall be submitted with the building permit application.

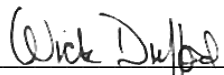
3. Any issues concerning relocation of the septic tank(s) shall be resolved before building permit approval.

4. The applicants shall comply with the recommendations of the Fish and Wildlife Assessment prepared by Edison Engineering, dated April 21, 2007.
5. The Protected Critical Area (PCA), as mapped, shall be recorded with the County Auditor prior to building permit approval.
6. The applicants shall comply with all relevant State and County regulations, including but not limited to, State Water Quality Criteria for Surface Water and for Groundwater, temporary erosion/sedimentation measures of the County Drainage Code, Maximum Environmental Noise Levels, and Northwest Clean Air Agency requirements.
7. If the applicants propose any modifications to the proposal, they shall apply for a new permit or a permit revision prior to commencing construction.
8. The project shall commence within two years of the date of final approval and shall be completed within five years thereof or the variance shall become void.
9. Failure to comply with any of these conditions may result in permit revocation.

### **DECISION**

The requested Shoreline Variance is approved, subject to the conditions set forth above. The development shall be set back at least 26 feet from the OHWM.

DONE this 5<sup>th</sup> day of March, 2008.

  
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Wick Dufford, Hearing Examiner

Date Transmitted to Applicants: March 5, 2008.

### **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 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.