

BEFORE THE SKAGIT COUNTY HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION

Applicant: Cavanaugh Investment Company LLC
3829 41st N.E.
Seattle, WA 98105

File No: PL08-0263

Request: Shoreline Substantial Development and Variance Permit

Location: 34096 North Shore Drive on the shore of Lake Cavanaugh,
within a portion of Sec. 23, T33N, R6E, W.M.

Parcel No: P66336

Shoreline Designation: Rural Residential

Summary of Proposal: To replace an existing residence with a new one located
29.7 feet landward of the Ordinary High Water Mark
(OHWM). The project will include a new deck 23.7
feet landward of the OHWM. A bridge will be
constructed across an unnamed Type 3 stream to provide
access.

Public Hearing: After reviewing the Report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on April 15, 2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Cavanaugh Investment Company LLC (applicant) seeks approval of a Shoreline Variance for placement of a house and deck on lakefront property on Lake Cavanaugh. Also sought is a Shoreline Substantial Development Permit to build a bridge across a stream on the property in order to provide access.
2. The property is located at 34096 North Shore Drive, within a portion of Sec. 23, T33N, R6E, W.M. The parcel number is P66336. The Shoreline Designation is Rural Residential.
3. The lot, like the others in the long-ago platted Division 1 of the Lake Cavanaugh Subdivision, is long and narrow – 249 feet by 90 feet. The inland boundary is at North Shore Drive.
4. The proposed replacement residence and deck will be farther from the Ordinary High Water Mark (OHWM) than the present structures. The deck will be 23.7 feet landward of the OHWM. The house will be 29.7 feet landward of the OHWM. There will in addition be a porch along the southeast side of the house, and a small garage at the rear of the house.
5. The footprints proposed are: house – 1,600 square feet; deck – 264 square feet; porch – 560 square feet; garage – 672 square feet. The access bridge will occupy 994 square feet. Overall, the developed area within the shoreline will be 29.92%. The applicant proposes subsurface pavers with vegetated cover on the west side of the bridge, in order to reduce impervious developed area.
6. The property is presently served with a domestic well, located adjacent to the proposed deck, drilled in 1993. The yield is adequate for the residential use. The existing septic system approved in 1993 is large enough to accommodate the new expanded house.
7. The property contains three regulated critical areas – Lake Cavanaugh (50 foot setback), a Type 3 unnamed stream (100 foot buffer) and a Type 4 unnamed stream. The Type 4 stream runs through existing culverts to join the Type 3 Stream on the site. There are presently three footbridges over the Type 3 stream. All of these will be removed.
8. When the 100-foot buffer for the Type 3 Stream is considered together with the shoreline-program-mandated 50 foot shore setback and the eight foot side setback, only 70 square feet of land remain between the lake and the road that is unencumbered by buffers or setbacks.

9. The calculated average shore setback of dwelling units within 300 feet of both sides of the site is 28 feet. The foundation for the new residence will be slightly farther landward than this. The proposed new deck will be less than 30 inches above average grade.

10. A Fish and Wildlife Habitat Assessment was prepared by Edison Engineering. The Assessment concluded that disturbance of the lake buffer will be increased from 664 to 982 square feet. Disturbance in the outer 50 feet of the stream buffer will increase from 552 square feet to 2,115 square feet. Disturbance of the inner 50 feet of the stream buffer will increase by about 1,100 square feet, consisting of largely of driveway and bridge.

11. The applicants are trying to preserve as many trees as possible. Seventeen trees will be removed as a result of the project. There are 20 cedar trees near the shore that will not be disturbed. Only one tree will be removed from within the 50-foot lake buffer, while an existing sapling will be transplanted to the front of the house within that buffer. Some reduction of environmental impacts will be provided through the removal of creosoted railroad ties from the site.

12. The Fish and Wildlife Assessment concludes that if sufficient diversity and habitat features are added to the site, the wildlife habitat value can be increased above its current value. The Assessment provides a Buffer Enhancement Plan to accomplish this.

13. In addition to the planting plan for buffer enhancement, the Fish and Wildlife Assessment recommended construction guidelines, addressing bridge construction in particular. A revised Critical Area Site Plan was submitted with a June 25, 2008 Addendum.

14. Environmental review of the project was performed pursuant to the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was issued on November 6, 2008. The MDNS was not appealed. The conditions imposed were compliance with existing regulations, compliance with the site plan information provided, and performance of the mitigation and general construction measures recommended in the Fish and Wildlife Assessment.

15. While the residence is exempt from Shoreline Substantial Development Permit requirements, the proposed bridge requires such a permit. The stream bisects the property near North Shore Drive, eliminating any alternative route to the residence. The bridge will extend beyond the stream bank on either side of the crossing by approximately 7.5 feet. The bridge is a shoreline dependent structure which does not violate any identified policies or regulations under the Shoreline Management Act or the local Shoreline Master Program (SMP).

16. Under the SMP, the shore setback for a single family residence at this site is 50 feet from the OHWM. For accessory uses, such as the proposed low deck, the shore

setback is 35 feet. The variance sought is from each of these setback requirements, to allow the house and deck to be placed as proposed.

17. Variances from the 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.

18. The Staff Report analyzes the variance requests in light of the above criteria and finds that, as conditioned, the project 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.

19. In particular, it is noted that the proposal in consistent with the pattern of development at Lake Cavanaugh which initially occurred long before the Shoreline Management Act on narrow lots which severely constrain development. The setbacks proposed here will not interfere with adjacent development.

20. The applicant is a family enterprise. In view of the present financial climate, an extension of usual start and completion times for the project was requested. The Examiner finds this request reasonable.

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 9.06, 10.02(3).
2. The proposals for the residence and accessories are exempt from the procedural requirements of SEPA. In regard to the bridge which is subject to SEPA, the requirements of the Act have been fulfilled.
3. The bridge project, as conditioned, meets the criteria for issuance of a Shoreline Substantial Development Permit. The policies and regulations of the Shoreline Management Act and the local SMP are not violated. No conflict with any statewide regulations of the Department of Ecology was identified. SMP 9.02.
4. The variance requests meet the criteria for issuance of Shoreline Variances. 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 constructed 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. Prior to applying for a building permit, the applicant shall obtain any further approvals needed from the Health Department, if any.
4. The subject project shall comply with all conditions of the MDNS, issued on November 6, 2008.
5. If the applicant proposes any modifications to the subject proposal, it shall apply for a new permit or permit revision from this office prior to the start of construction.
6. The applicant shall adhere to all recommendations presented in the Fish and Wildlife Habitat Assessment and Addendum prepared by Edison Engineering.
7. The applicant shall install silt fencing on the top of either side of the stream bank within 50 feet of the bridge location during construction.

8. The project shall use the site plan submitted with the June 25, 2008 Addendum to the Fish and Wildlife Assessment

9. The approved site plan shall be recorded at the County Auditors office prior to the issuance of building permits.

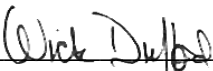
10. The project shall be commenced within three (3) years of the date of final approval and completed within seven (7) years thereof or the permits shall become void.

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

DECISION

The requested Shoreline Substantial Development Permit and the request Shoreline Variances are approved, subject to the conditions set forth above.

DONE this 22nd day of April, 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 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.