

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Roger and Donnie Jewel
18730 45th Place NE
Lake Forest Park, WA 98155

File No: PL08-0331

Request: Shoreline Variance Permit

Location: 33567 Cliff Road on the shore of Lake Cavanaugh,
within a portion of Secs. 22 & 27, T33N, R6E, W.M.

Parcel No: P66929

Shoreline Designation: Rural Residential

Summary of Proposal: To add a 12' by 22' addition to the rear of an existing lakefront cabin. The proposed addition will be set back at least 43 feet from the Ordinary High Water Mark.

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. Roger and Donnie Jewel (applicants) seek approval of a Shoreline Variance for creation of an addition to an existing cabin on lakefront property on Lake Cavanaugh.

2. The property is located at 33567 Cliff Road, within a portion of Secs. 22 & 27, T33N, R6E, W.M. The parcel number is P66929. The Shoreline Designation is Rural Residential.

3. The lot is rectangular (.3 acres) measuring 219.5 feet long by only 60 feet wide, situated between the road and the lake. It was platted in pre-shoreline-management days as Lot 156, Block 1, Lake Cavanaugh Subdivision No. 3. The slope of the lot averages 31% from road to water but slopes vary from 20 to 128% and there is slightly more than 68 feet of elevation gain on the property.

4. The existing cabin, situated near the lake, measures 20.3 feet along the lakefront and is 32 feet deep. It is a two bedroom, one bath, two story structure. The proposal is to add a 20.3' by 12' addition to the rear of the cabin (243.9 square feet). This will provide kitchen and bathroom space and enlarge the second bedroom.

5. The side of this addition that is nearest the water will be 43 feet from the Ordinary High Water Mark (OHWM). Under the local Shoreline Master Program (SMP), the regulatory shore setback on this property is 50 feet from the OHWM. The applicants have sought a variance from the regulatory setback in order to install the addition.

6. The addition will involve altering the roof line so that it runs perpendicular to the lake rather than parallel to it. The change will not cause the building height to exceed the 30 foot limit.

7. Existing structures on the lower portion of the site include the cabin, a deck in front, a boat house, a hot tub and pad, two sheds, a stone bulkhead, and a dock. The OHWM is at the bulkhead. The upper portion of the property is used for access, parking and the septic drainfield.

8. Site coverage will be retained at less than the 30% limit. Grasscrete will be used for portions of the driveway. The hot tub and associated paving will be removed.

9. The average shore setback of dwelling units within 300 feet of the side property lines is 21.88 feet. The record does not provide a figure for the setback of the existing residence from the lake, but given the dimensions of the house and the starting point for the addition, the residence is clearly closer to the lake than its neighbors. However, the proposed addition, if viewed as a separate structure will be significantly landward of the average of neighboring setbacks.

10. A Fish and Wildlife and Geohazard Assessment was prepared by Edison Engineering. The Assessment determined that disturbance of the 50-foot lakeside buffer will be minimal. Construction of the addition will be in an area occupied by part of the existing driveway and the overhang of the roof of the existing house. The affected area within the 50 foot setback is less than 120 square feet. The only vegetation removed will be a small vine maple, a western red huckleberry growing on a stump and four or five sword ferns. Some 81 square feet of habitat will be gained by removing an existing stairway and moving the woodshed out of the 50-foot buffer. An additional 155.3 square feet will be gained by removing the hot tub and its pad. Overall, there will be no loss of habitat.

11. The Assessment recommended that the shrubs and sword ferns removed be relocated to the area between the house and the northwest property line, and that two Pacific yew trees be planted in this relatively dark area. Plantings of native shrubs were proposed in the areas formerly occupied by the woodshed, stairway and hot tub.

12. The Assessment concluded that, with the modest plantings proposed, the habitat capabilities of the buffer will be increased slightly above the current state. The Critical Area Site Plan further proposes for inclusion in the Protected Critical Area (PCA), a 160-square foot buffer addition north of the driveway's end.

13. The Geohazard Assessment determined that the soil on the site is dense and not likely to present a hazardous slope condition. No existing erosion or instability was observed. The report concluded that the site is suitable for the proposed additional development.

14. 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.

15. The Staff Report analyzes the variance request 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.

16. The applicants want to make Lake Cavanaugh their permanent home and simply ask for a modest increase in space in order to make their cabin comfortably habitable for full-time residency. The addition will not change the appearance of the property from the lake. It will not alter the existing pattern of development along the waterfront. It will not harm the shoreline environment. The Examiner determines that the enlargement of the existing non-conforming structure can be accomplished without appreciable threat to the health, safety and general welfare of the public. It will not violate the purposes of the Shoreline Management Act or the local SMP. The Examiner finds that to deny the enlargement would constitute a hardship greater than the public benefit derived from denial.

17. There were no indications of neighborhood concern in the record. There was no public testimony at the hearing.

18. 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 for the residential addition is exempt from the procedural requirements of State Environmental Policy Act.

3. For some reason this proposal was analyzed as a shoreline variance rather than as an enlargement of an existing nonconforming use. But, in either case, it meets the relevant criteria for approval. See SMP 10.03(1) and SMP 12.04.

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

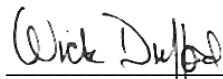
CONDITIONS

1. The project shall be constructed as described in the application materials, except as the same may be modified by these conditions. The applicants shall use the site plan date stamped January 6, 2009 (Exhibit 5).
2. The applicants shall obtain any other required permits and abide by the conditions of same.
3. Prior to applying for a building permit, the applicants shall obtain all applicable approvals from the County Health Department.
4. The PCA shall be recorded as required by law.
5. The applicants shall follow the general construction and planting recommendations of the Fish and Wildlife Habitat Assessment, dated March 23, 2008.
6. The soil that the addition will be built on shall be compacted as required.
7. Grasscrete pavers shall be used as necessary to meet site coverage limitations.
8. If the applicants propose any modifications to the subject proposal, they shall apply for a new permit or permit revision from Planning and Development Services.
9. The project shall be commenced within two (2) years of the date of final approval and completed within five (5) years thereof or the permits shall become void.
10. Failure to comply with any condition may result in permit revocation.

DECISION

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

DONE this 1st day of May, 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.