

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**  
**FINDINGS, CONCLUSIONS AND DECISION**

**Applicants:** Richard and Lynne Munoz  
11951 Preswick Lane  
Mukilteo, WA 98275

**Agent:** Jackie Chriest  
33688 Bamboo Lane  
Mount Vernon, WA 98274

**File No:** PL08-0444

**Request:** Shoreline Variance Permit

**Location:** 33184 West Shore Drive on the shore of Lake Cavanaugh,  
within a portion of Sec. 22, T33N, R6E, W.M.

**Parcel No:** P66894

**Shoreline Designation:** Rural Residential

**Summary of Proposal:** To replace an existing manufactured home with a new residence, deck and garage to be located 29 feet or more landward of the Ordinary High Water Mark (OHWM).

**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. Richard and Lynne Munoz (applicants) seek approval of a Shoreline Variance for placement of a house and accessories on lakefront property on Lake Cavanaugh.

2. The property is located at 33184 West Shore Drive, within a portion of Sec. 22, T33N, R6E, W.M. The parcel number is P66894. The Shoreline Designation is Rural Residential.

3. The lot is rectangular measuring 179 feet long by only 77 feet wide. It was platted in pre-shoreline-management days as Lot 119, Block 1, Lake Cavanaugh Subdivision No. 3. The slope is slightly more that 22% from the upper (north) property line to the lakeshore.

4. At present a manufactured home and two sheds are located on the property. The existing home's deck is 11 feet from the Ordinary High Water Mark (OHWM). The new deck will be 29 feet inland on the OHWM. The foundation of the new residence will be 38 feet from the OHWM.

5. The two neighboring residences located directly east and west of the site are set back no more than 15.3 feet landward of the OHWM. The calculated average shore setback of all dwelling units within 300 feet of both sides of the site is 28.97 feet.

6. The footprints proposed are: house – 1,685 square feet; deck – 989 square feet; garage – 925 square feet. Overall, the developed area within the shoreline will be 29.84%. To keep the percentage below 30%, the new driveway will be required to use sub-surface pavers covered 100% by grass. The two sheds (both within the side setback) will be removed.

7. A Fish and Wildlife Habitat Assessment was prepared by Edison Engineering. The Assessment determined that disturbance of the 50-foot lakeside buffer will be increased by about 349 square feet, but concluded that the resulting buffer area can be made to provide more habitat than currently exists at the shore by instituting a Buffer Enhancement Plan.

8. The applicants propose to plant more area and more plants than recommended in the Assessment. They will use northwest native plants and follow a professionally-prepared landscape plan. Additionally they propose to remove the creosote timber bulkhead at the shoreline and several creosote retaining walls. A natural stone bulkhead will be installed. The proposed shore setback area will be included within a Protected Critical Area (PCA).

9. The applicants will be decommissioning what they term their “outdated septic system and out house” and will install a new state-of-the-art system, tanks and drain field.

10. Under the local Shoreline Master Program (SMP), the regulatory residential setback from the OHWM is 50 feet. The applicants seek a variance from this requirement. There isn't room on the lot to set the residence back any farther and still accommodate the space needed for the drain field and driveway access.

11. 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.

12. 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.

13. Photos introduced at the hearing clearly show that the proposal is consistent with the pattern of development in the neighborhood. Two comparable variances have recently been given in the vicinity. The setbacks proposed here will not interfere with adjacent development.

14. With their removal of creosote materials and the upgrading of the Buffer Enhancement Plan, the applicants are making a concerted effort to improve the shore environment. The effect will be an aesthetic improvement as well.

15. There were no adverse comments in the record. Two neighboring couples submitted letters of support. Another neighbor endorsed the project at the hearing.

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. SMP 10.02(3).

2. The proposals for the residence and accessories are exempt from the procedural requirements of State Environmental Policy Act.

3. The project, as conditioned, meets the criteria for issuance of Shoreline Variances. 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, except as the same may be modified by these conditions.

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. The PCA shall be recorded as required by law.

4. The applicants shall follow the general construction recommendations of the Fish and Wildlife Habitat Assessment, dated July 15, 2008.

5. The applicants shall carry out the Buffer Enhancement Plan which they proposed in a document received by Planning and Development Services (PDS) on October 14, 2008.

6. Sub-surface pavers shall be used as necessary to meet site coverage limitations.

7. If the applicant proposes any modifications to the subject proposal, it shall apply for a new permit or permit revision from PDS.

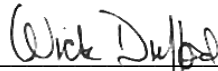
8. The project shall be commenced within two (2) years of the date of final approval and completed within five (5) years thereof or the permits shall become void.

9. 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 1<sup>st</sup> day of May, 2009



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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.