

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Janicki Family
c/o Jeanne Janicki Gross
815- Garden of Eden Road
Sedro Woolley, WA 98284

Agent: Ria Vanderpool
Carletti Architects
116 E. Fir Street, Suite A
Mount Vernon, WA 98273

File No: PL#09-0013

Request: Shoreline Variance (side setbacks)

Location: Shore of Samish Bay, 10917 Black Brant Lane, within
a portion of Sec. 26, T36N, R2E, W.M.

Parcel No: P47156

Shoreline Designation: Rural Residential

Summary of Proposal: To remodel an existing non-conforming cabin by enclosing the carport on the east side and rebuilding a bedroom on the west side. A small second story addition will also be constructed. The resulting structure will be approximately three feet from the east property line and approximately 11 inches from the west property line. The project will not enlarge the existing structural footprint.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on March 11, 2009

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. The Janicki family seeks a Shoreline Variance Permit to make changes to a non-conforming cabin on north beach, Samish Bay.
2. The structure is located at 10917 Black Brant Lane, within Sec 26, T36N, R2E, W.M. The Shoreline Designation is Rural Residential.
3. The lot is small extremely narrow – around 48 feet wide, severely limiting development possibilities. The existing cabin was built in 1960, before the advent of current shoreline regulations. The cabin is situated entirely within the shoreline zone. It is about 26 feet from the ordinary high water mark. Its footprint is 1,718 square feet.
4. The project proposed will not enlarge the existing building footprint. It will be a remodel on a new foundation, raising the structure approximately 12 to 18 inches. On the east the carport (522 square feet) will be enclosed. On the west, a bedroom (428 square feet), removed because of dry rot, will be reconstructed. A small second story addition (558 square feet) will be built.
5. The remodel will result in an 11 inch setback on the west and a three-foot setback on the east. This will merely replicate the current side setbacks. The lot coverage and amount of impervious surface will remain the same.
6. County department comments are incorporated herein as conditions of approval. The Fire Marshal who is usually concerned with side setbacks had no concerns since the existing situation will not change.
7. The regulatory sideyard setback under the local Shoreline Master Program (SMP) is eight (8) feet. The subject cabin is situated so that the space contemplated by this regulation will in fact be present. The lot to the west is a shoreline access lot that will not be developed. On the east the neighboring house is some 18’9” from the property line.
8. Nonetheless these side setback variances are sought to satisfy the letter of the law.
9. Zoning setback requirements are being addressed by an administrative decision in PL08-0678. The applicant requested this process, per SCC 14.06.060.
10. A site visit by Critical Areas staff concluded that no further CAO review is needed since there will be no expansion of the footprint of the residence, driveway and carport.

11. The remodeled cabin conforming to the present footprint will be consistent with other structures in the neighborhood. The area was developed with similar structures built close to the shore on narrow lots. Shoreline side setbacks in the surrounding area are often less than the required eight (8) feet.

12. There were no comment letters on this proposal. John Janicki testified that the neighbors approve.

13. Variances from the Master Program 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.

14. The Staff Report analyzes the application in light of the above criteria and finds that, as conditioned, the project will comply 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.

15. 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 project is exempt from the procedural requirements of the State Environmental Policy Act (SEPA).
3. The project will have no new shoreline impacts. Spatially it preserves the status quo. Aesthetically it will probably be an improvement.
4. The SMP allows the continuance of non-conforming uses and structures. SMP 12.02. The variance process is being used here because the County considers the enclosure of the carport to constitute a new use.
5. As conditioned, the proposal is consistent with the criteria for approval of Shoreline Variances. SMP 10.03(1).
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

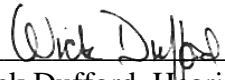
CONDITIONS

1. The project shall be constructed as shown on the application materials, except as the same may be modified by these conditions.
2. The applicants shall obtain a County Building Permit and all other necessary approvals. With the Building Permit application, the applicants shall supply all information required by the County Health Department.
3. The project must be commenced within two years of the date of final approval of this variance and be completed within five years thereof of the variance shall become void.
4. Failure to comply with any condition may result in permit revocation.

DECISION

The requested Shoreline Variance (PL09-0013) is approved, subject to the conditions set forth above.

DONE this 17th day of March, 2009.



Wick Dufford, Hearing Examiner

Date Transmitted to Applicants: March 17, 2009

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.