

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS CONCLUSION AND DECISION

Applicant: James Paulson
6782 Salmon Beach Road
Anacortes, WA 98221

File No: PL09-0147

Request: Shoreline Variance

Location: 6782 Salmon Beach Road on the shore of Similk Bay,
within a portion of Sec 19, T34N, R2E, W.M.

Parcel No: P68457

Shoreline Designation: Rural Residential

Summary of Proposal: To increase impervious surface on residential property
and tight-line runoff directly to the bay. This is in
response to expert opinion regarding minimizing risk
of landslide on property with a known underlying landslide
fault line.

Public Hearing: After reviewing the report of Planning and Development Services,
the Hearing Examiner conducted a public hearing on October 28,
2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. James Paulson seeks a Shoreline Variance to increase the site coverage of developed area on his residential property to 45%.

2. The property is located at 6782 Salmon Beach Road on the shore of Similk Bay, within a portion of Sec 19, T34N, R2E, W.M. The parcel number is P68457. The shoreline environment designation is Rural Residential.

3. The area is considered an active landslide area, following a landslide in 1990 that damaged several homes in the vicinity. As part of the review process for the applicant's building permit for his single-family home, a site plan was approved that indicated a portion of the site would be fitted with impervious pavers in order to limit the amount of impervious site coverage to the 30% maximum allowed under the local Shoreline Master Program (SMP).

4. Subsequently it became known that the subject property is located on a fault zone. A professional evaluation recommended prevention of infiltration of surface water into the sandy soil and the "fault" or landslide surface under the residence.

5. The applicant proposes to place an impervious surface over those areas previously identified for pervious pavers and to slope and grade the installation to collect surface water runoff and direct it to an existing storm drain and tight-line system that discharges to the bay. The result will be site coverage of approximately 45%.

6. The application was circulated to various County departments and none objected. The Health Department commented that pavement drainage should not impact the septic system or reserve area.

7. Notice of the application was given as required by law. Notice of the public hearing was published, mailed to property owners within 300 feet and posted.

8. Only one public comment was received which did not directly address the requested variance. There was no public testimony at the hearing

9. A Critical Areas Site Assessment was performed and noted that mitigation measures were taken earlier in connection with the construction of the residence. The Assessment concluded that the variance would not generate impacts to fish and wildlife conservation areas above the existing baseline and said that the need to assure stability of the slope warrants the proposed increase in developed area. Installation of an oil water separator to protect water quality was recommended.

10. SMP 10.03(1) sets forth the following criteria for variance permits for development to be located landward of the Ordinary High Water Mark:

- a. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, 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 adjacent properties or the shoreline environment designation.
- d. That the variance authorized 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. That the public interest will suffer no substantial detrimental effect.

11. The Staff Report provides an explanation by the applicant of how this application meets the above criteria. The Staff agrees with this analysis and recommends approval of the variance. The Hearing Examiner concurs. The Staff Report is by this reference incorporated herein as though full set forth.

12. The landslide danger is a unique condition that threatens the reasonable residential use of the property. Other parcels in the area have similar areas covered with impervious surface. Preventing rainwater from permeating the soil is the minimum prudent action to mitigate the landslide risk. The public interest will suffer no substantial detriment because shoreline values will not be adversely affected.

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

3. The proposal meets the relevant SMP variance criteria. SMP 10.03(1).
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

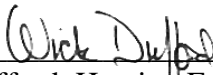
CONDITIONS

1. The project shall be carried out 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. The project shall not impact the septic system or reserve area.
4. An oil water separator shall be installed in the drainage system.
5. Temporary erosion, sedimentation and drainage control measures shall be employed in accordance with local, state and federal requirements. Such measures shall be in place prior to commencement of soil disturbance and shall be maintained for the life of construction activities.
6. Construction pursuant to this variance shall commence within two (2) years of the date of issuance of final approval and be completed within five (5) years thereof, or the permit shall become void.
7. If the applicant desires any modifications of the subject proposal, he shall apply for a new permit or revision to the existing permit prior to the start of construction.
8. 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 30th day of November, 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 RCE 90.58.140.