

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicants: Noel and Julie Anne Chia
431 8th Avenue West
Kirkland, WA 98033

Agent: Dan Skagen - Sternoff Development
255 - 7th Avenue South
Kirkland, WA 98033

Request/File No: Shoreline Variance (setback, lot coverage), PL10-0003

Location: 6976 Salmon Beach Road on the shores of Similk Bay, within
NE1/4 Sec. 19, T34N, R2E, W.M.

Shoreline Designation: Rural Residential

Summary of Proposal: To replace an old residential structure with a new two-story house within the existing footprint. The new residence and deck will be 75 feet landward of the Ordinary High Water Mark (OHWM), the septic system with retaining wall for the sand filter will be 60 feet back from the OHWM. Site coverage will be 34%.

SEPA Compliance: Exempt

Public Hearing: October 13, 2010. No public testimony. Planning and Development Services (PDS) recommended approval.

Decision: Approval, subject to conditions

Date of Decision: October 21, 2010

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within five days of this decision. The decision may be appealed to the Board of County Commissioners by filing an Appeal with PDS within five days of the date of the decision or decision on reconsideration, if applicable (SMP 13.01)

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Noel and Julie Anne Chia (applicants) seek a Shoreline Variance in order to build a new residence on the shore of Similk Bay.
2. The project will be built on Parcel No P77767 located at 6976 Salmon Beach Road, within the NE1/4 Sec. 19, T34N, R2E, W.M. The roadway is on the upland side of the lot. The site slopes downhill from the road to the shoreline. The lot is about 130 feet deep and approximately 105 feet wide. The undeveloped portion of the site is largely maintained with native plant species.
3. A new two-story residence will be built on the foot print of an old prior home that was recently demolished. The setback of the house from the Salmon Beach Road is 25 feet, which meets the County standard. A parking area and garage fills the space between the road and the house.
4. The setback of the residence and its deck from the Ordinary High Water Mark (OHWM) will be 75 feet. The standard set by the Skagit County Shoreline Master Program (SMP) for the shore setback is 97 feet from the OHWM (the average of setbacks of adjacent homes within 300 feet in either direction).
5. The project involves the repair of the existing septic system, including replacing the tanks, drain field, and sand filter, and building a retaining wall to hold the sand filter. This installation will extend another 15 feet toward the shoreline from the house, making the shore setback 60 feet when the septic system is included.
6. The SMP lot coverage maximum is 30 percent. The proposal will slightly increase the impervious area of the site to 34 percent, but additional runoff is anticipated to be insignificant.
7. Variances from the SMP standards are sought for the shore setback and for lot coverage.
8. A garage currently exists on the site, approximately six feet west of the eastern property line and 97 feet from the OHWM. The garage was built prior to the adoption of the Skagit County Shoreline Master Program, and is a legal nonconforming structure. The garage will receive a new roof, a project viewed as routine maintenance,
9. The neighborhood consists of single family residences and cabins along the shoreline of Similk Bay, several of which were recently built. Although the subject house will be somewhat closer to the water than the neighborhood average, given the mature vegetation in the area, it will not interfere with any neighboring views. The house will be within the 30-foot SMP height limitation.
10. The size and topography of the lot are such that there is no other place on the property where the house could reasonably be built or where the septic system could be placed.

11. Because the building foot print will not change, the proposal is exempt from standard critical areas review. Nevertheless, the applicant submitted a Fish and Wildlife Habitat Assessment, a Geology Hazard Assessment and a Subsurface Exploration Geological Hazard and Preliminary Geotechnical Engineering Report.

12. The Fish and Wildlife Assessment concludes that the impact to habitat will be minimal with no net loss of function and value if the applicant maintains the existing vegetation. The State Department of Fish and Wildlife requested a condition that the applicant prepare a vegetation management plan, limiting the removal of native vegetation and calling for replanting of any trees that are removed with 4-to-6-year-old seedlings of the same species.

13. The geological reports acknowledge that the site is within the historic Gibraltar landslide complex, but concludes that the proposed improvements can be constructed without increasing the risk of slope movement. The most recent landslide activity occurred in 1991 and undoubtedly more of such activity will occur at some time in the future -- perhaps soon, perhaps centuries from now. The applicants are aware of this risk and their project will not make the risk any greater.

14. The Geology Hazard Assessment recommends that storm water from the development be dispersed and infiltrated onsite or tight-lined to the beach. The Subsurface Exploration, Geologic Hazard and Preliminary Geotechnical Engineering Report recommends deep foundations to stabilize the site and reduce the risk of differential settlement.

15. The Staff urges that the recommendations of the various technical reports be included as permit conditions.

16. The application was sent to various County departments for review. The Health Department reported the septic design submitted by the applicants has been approved. Public Works had no comments. Current Planning Staff commented that zoning setbacks will need to be met. The Fire Marshal's office had no comments.

17. The criteria for approval of Shoreline Variances landward of the OHWM are set forth below. The applicants' responding comments are in italics:

(a) The strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.

"Strict application of the standards set forth in the master program would effectively make our lot unusable for the intended residential use. The most significant issue affecting our project is the setback requirements for the shoreline."

(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.

"To follow the setback requirements called out in the shoreline master program would require the home to be placed approximately 20 feet back, effectively placing it in the street."

(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 property or the shoreline environment designation.

"As our project is designed to be a single family residence it will be compatible with the rest of the neighborhood consisting of single family residences. Not only will the project not cause adverse effects to adjacent properties, it will actually benefit it in the way of raising the quality of homes in the neighborhood."

(d) The variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the same area and will be the minimum necessary to afford relief.

"As our project is designed to be a single family residence within a neighborhood of single family residences it will not be a special privilege that other properties do not enjoy. Due to the setback requirements set forth in the master program this variance is the minimum necessary to afford relief."

(e) That the public interest will suffer no substantial detrimental effects.

"The public will not only not suffer detrimental effects but will rather benefit from increased property values and energy/environmental improvements to a property that was previously used by an inefficient home."

18. In evaluating the application, the Staff generally agreed with the applicants' responses to the variance criteria. They noted that the house is proposed to be placed as far landward of OHWM as possible considering the size of the lot, the topography, and existing development including the parking area. Staff concluded that the depth of the parcel precludes a greater setback than that proposed.

19. The Examiner concurs with the analysis of Staff. Further the Examiner finds that the granting of the setback variance under these particular facts is not likely to have a cumulative impact. Moreover, the Examiner finds that the modest increase in lot coverage is justified for a reasonable use of the property and is dictated by the property's size.

20. The SMP's shore setback for residential development includes accessory facilities, except for uses determined to be water dependent. The retaining wall for the sand filter is not water dependent. Accordingly, the setback variance in this case is for the residence at 75 feet and the retaining wall and septic facility at 60 feet.

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 subject matter of this proceeding. SMP 10.02(3).
2. The proposal is exempt from the procedural requirements of the State Environmental Policy Act (SEPA).
3. As conditioned, the project will be consistent with the criteria for approval of a Shoreline Variance landward of the OHWM. 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 shown in the application materials, except as the same may be altered by these conditions.
2. The applicants shall obtain a building permit and all other required permits and shall abide by the conditions of same.
3. Temporary erosion/sedimentation control measures shall be used in accordance with Chapter 14.32 SCC (drainage).
4. The applicants shall comply with all other applicable state and local regulations and ordinances, including but not limited to Chapter 173-201A and 173-200 WAC (surface and ground water quality), Chapter 173-60 WAC (noise), Chapter 14.24 SCC (critical areas), and Chapter 14.16 SCC (zoning).
5. Aesthetic impacts shall be minimized.
6. The applicants shall comply with the recommendations in the Fish and Wildlife Habitat Assessment by Lisser and Associates, the Geology Hazard Assessment by Stratum Group, and the Subsurface Exploration, Geologic Hazard and Preliminary Geotechnical Engineering Report by Associated Earth Sciences.
7. If the applicants propose any modification of this project as approved, they shall request a permit revision.
8. The 60 foot shoreline setback area shall be placed into a Protected Critical Area (PCA) per the requirements of SCC 14.24.170. Vegetation shall not be removed from the PCA

with the exception of non-native vegetation. Disturbed areas from construction or removal of non-native invasive vegetation shall be replaced with 4 to 6 year old native seedling trees.

9. The project shall be commenced within two years of final approval of the Shoreline Variance and completed within five years thereof.

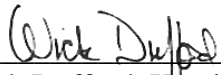
10. A copy of this decision shall be submitted with the building permit application.

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

DECISION

The application for a Shoreline Variance (PL10-0003) is approved, subject to the conditions set forth above. The variance for the residence (house and deck) is 75 feet from the OHWM. The variance for the retaining wall and septic system is 60 feet from the OHWM. The lot coverage variance is for 34% lot coverage.

DONE this 21st day of October, 2010



Wick Dufford, Hearing Examiner

Transmitted to Applicants on October 21, 2010

See Page 1, Notice of Decision for information on Reconsideration and Appeal.

Note: If approval of this Shoreline Variance becomes final at the County level, the State Department of Ecology must approve it or disapprove it, pursuant to RCW 90.58.140.