

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Applicant:** Steven J. Barker  
33005 E 127th Street  
Duvall, WA 98019

**Request/File No:** Shoreline Variance Application, PL11-0256  
Critical Areas Variance Application, PL11-0418

**Location:** Cypress Island, Lot 2 of Madrona Estates on the shore of  
Strawberry Bay, located within the SE1/4 Sec. 31, T36N,  
R1E, W.M.

**Shoreline Designation:** Rural

**Summary of Proposal:** Construction of an 864 square-foot single-family residential cabin  
located 29 feet from the Ordinary High Water Mark (OHWM)  
to the south and approximately 60 feet from the edge of a Category  
II wetland to the north.

**SEPA Compliance:** Exempt

**Public Hearing:** May 23, 2012. No public testimony. Planning and Development  
Services (PDS) recommended approval.

**Decision/Date:** Approval, subject to conditions. June 14, 2012

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 5  
days of this decision. The decision may be appealed to the Board  
of County Commissioners by filing an appeal with PDS within 5  
days of the date of decision or decision on reconsideration, if  
applicable.

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

## **FINDINGS OF FACT**

1. Steven J. Barker (applicant) seeks a shoreline variance and a critical areas variance to allow the construction of a cabin on Cypress Island within the shore setback and the wetland setback.
2. The subject site is located on Cypress Island on the shore of Strawberry Bay. It is Lot 2 of Madrona Estates, a subdivision within SE1/4 Sec. 31, T36N, R1E, W.M. The parcel number is P67316.
3. The property is designated Rural in the Skagit County Shoreline Master Program (SMP). The Comprehensive Plan and zoning designation is Rural Reserve. The parcel is 75 feet wide along the waterfront and 100 feet deep.
4. The proposal is to build a single family residential cabin covering 864 square feet. The cabin will be 29 feet from the OHWM of Strawberry Bay to the south and approximately 60 feet from the edge of a Category II wetland to the north.
5. The proposed cabin will be located within a 35-lot subdivision. The plat was approved in 1963, prior to the adoption of the Shoreline Management Act and Critical Areas regulations. 25 lots within the subdivision have been developed with permanent structures and outbuildings. The average size of the existing cabins is about 989 square feet.
6. The proposed cabin will be the last within the subdivision to be constructed along the shore. The average setback from the OHWM of existing cabins is 29 feet, so this structure will conform to the established neighborhood pattern.
7. The development is within a V4 designated flood hazard area as indicated on FIRM map panel 0025 C. The proposed cabin will be elevated on piles to allow high water to pass under the structure.
8. The cabin will be connected to an existing permitted septic system, installed by the applicant some years ago in anticipation of eventual home construction. Drinking water will be obtained from a state-approved community water system.
9. The cabin will not be located within a fire district, but the Fire Marshall has determined that the exceptions within SCC 14.16.850(6) can be met.
10. Because the cabin will be located in line with existing cabins along the shore, aesthetic impacts are anticipated to be minimal.
11. The shore setback in this area is 50 feet from the OHWM. The area on the lot landward of this setback is already encumbered by the septic system. The critical area setback is 100 feet from the OHWM and from the wetland. These latter setbacks actually overlap, meaning that the cabin could not be built if the setbacks were observed.

12. The proposed cabin within this approved and extensively developed subdivision is a reasonable use of the property. The application of the setbacks in question would preclude reasonable use of the site. The cabin will be constructed within the maximum setback feasible from both the wetlands and the shore.

13. The subject setbacks were not in effect when the lot was platted. The hardship which the setbacks impose is related to the property and not the result of any actions of the applicant.

14. The project is being designed by Ron Smith and Associates who have designed other waterfront cabins in Madrona Estates. The placement, size and appearance of the structure will be compatible with other development in the area. The flow-through foundation will likewise be compatible with neighboring cabins. No adverse impacts to adjacent property or to shoreline values are anticipated.

15. Because the placement, size and appearance of the cabin are consistent with adjacent development, the variances sought will not be a grant of special privilege. Authorizing the variances will be the minimum necessary to allow reasonable use of the property.

16. Given the pattern of development in the area, these variances will not set a precedent or result in adverse cumulative impacts. Substantial adverse impacts to the shoreline environment are not likely to result.

17. A wetland and fish and wildlife habitat assessment was prepared by a qualified professional who concluded that the minimal impacts to the shoreline and wetland habitat can be offset with vegetation enhancement. As mitigation, the applicant shall be required to plant a minimum of 5 trees and 25 shrubs, all native to the Pacific Northwest.

18. The remaining lot area between the cabin and the OHWM as well as between the cabin and the wetland will be placed in a Protected Critical Area to provide for long-term preservation.

19. The proposal will not be detrimental to the public welfare. The variances are needed to cure a special circumstance and not simply for the economic convenience of the applicant.

20. The Staff Report analyzes the proposal against the criteria for shoreline variances, for critical areas variances, and for buffer reduction. The analysis concludes that the project, as conditioned, will be consistent with all relevant regulatory criteria. 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.

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.

2. The project is exempt from the requirements of the State Environmental Policy Act (SEPA).

3. The project, as conditioned, will meet the approval criteria for a shoreline variance, for a critical areas variance and for buffer reduction. SMP 10.03(1), SCC 14.24.140(3). SCC 14.24.240 and 540.

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 all other required permits and shall abide by the conditions of same. This includes, but is not necessarily limited to, a building permit and a floodplain development permit.

3. The applicant shall comply with all applicable local, state and federal regulations, including State Water Quality regulations for surface and ground water, Chapters 173-200 and 173-201A WAC, and State noise limitations, Chapter 173-60 WAC.

4. Temporary erosion/sedimentation control measures shall be used in accordance with the County's drainage ordinance, Chapter 14.32 SCC.

5. The applicant shall comply with the recommendations of the Fish and Wildlife Assessment, Shoreline Management Program, and Wetland Reconnaissance prepared by Bob Whitefield and dated September 29, 2011.

6. A mitigation planting plan shall be submitted as part of the building permit application. At a minimum the plan shall provide for planting 5 trees and 25 shrubs. All plants shall be installed in the growing season following construction. The plants shall be native to the Pacific Northwest and tolerant of onsite conditions.

7. Within 30 days of plant installation, the applicant shall submit an as-built site plan showing the mitigation plantings, as well as photographs of the installed plants.

8. Mitigation plants shall maintain a survival rate of 100% following the first year after planting and 80% following years three and five. If the plants do not meet the specified survival rate, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.

9. The proposal shall meet all applicable requirements of SCC 14.16.850(6), authorizing construction outside of a fire district.

10. A Protected Critical Area (PCA) site plan for the shoreline and critical areas setbacks shall be recorded with the County Auditor's office at the time of building permit application. See SCC 14.24.170.

11. The applicant shall submit a copy of this decision with the building permit application.

12. If the applicant proposes any modification of the subject proposal, he shall request a permit revision from PDS prior to construction.

13. The project shall be commenced within two years of the final approval of the shoreline variance and shall be completed within five years thereof.

14. The critical areas variance shall be void if the project is not commenced within three years of final approval.

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

### **DECISION**

The requested Shoreline Variance (PL11-0256) and the requested Critical Areas Variance (PL11-0418) are approved, subject to the conditions set forth above.

**DONE**, this 14<sup>th</sup> day of June, 2012.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant on June 14, 2012.

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