

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Dwight Small
2652 10th Avenue West
Seattle, WA 98119
- Request/File No:** Shoreline Variance, PL12-0442
Critical Areas Variance, PL13-0007
- Location:** Shore of Lake Cavanaugh, 33907 South Shore Drive, within SE1/4
Sec. 27, T33N, 6E, W.M. Parcel Nos. P66588, P66722.
- Land Use Designations:** Shorelines: Rural Residential
Zoning: Rural Village Residential
- Summary of Proposal:** To demolish an existing 480 square foot cabin and construct a new 880 foot cabin in its place. The existing cabin is set back 26 feet from the Ordinary High Water Mark (OHWM) of the lake. The new cabin will be set back approximately 34 feet from the OHWM. The distance from the OHWM to South Shore Drive is about 100 feet. No zoning variance is required for the setback from the road. Across the road to the south, a 1,080 square foot garage is proposed.
- SEPA Compliance:** Exempt per WAC 197-11-800(6)(b).
- Public Hearing:** August 28, 2013. Testimony by County staff and applicant. No public testimony. Planning and Development Services (PDS) recommended approval.
- Decision/Date:** The application is approved, subject to conditions. September 17, 2013.
- Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 5 days of the Shoreline decision and within 10 days of the Critical Areas decision. An appeal to the Board of County Commissioners may be filed with PDS within 5 days of the Shoreline decision and within 14 days of the Critical Areas decision - or of the decisions(s) 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. Dwight Small (applicant) seeks to demolish an existing cabin to erect a new one along the south shore of Lake Cavanaugh. The existing cabin was built in 1952.
2. The site is located at 33907 South Shore Drive, within the SE 1/4 Sec. 27, T33N, R6E, W.M. There are two parcels: Parcel P66588 is located between the lake shore and South Shore Drive. The distance between the lake and the road is roughly 100 feet. Parcel P66722 is located adjacent to and south of South Shore Drive. This interior lot is considerably deeper than the lake front lot.
3. On the lakeside parcel the existing cabin is located 26 feet from the Ordinary High Water Mark (OHWM) of the lake. The proposed replacement cabin would be set back 34 feet from the OHWM. The old cabin occupies about 480 square feet. The new one would cover 880 square feet. The 35-foot zoning setback from South Shore Drive would be met.
4. The septic system would be placed on the shore side lot, "snaked" between trees. An existing outhouse would be eliminated. If the new dwelling were moved farther back on the lot, trees would have to be removed and the septic system could not be accommodated.
5. The new cabin is to be built in a developed lakeshore residential setting. The proposed setback from the lake is slightly greater than the average of houses on adjacent lots. The placement of the structure would be typical of the area. The size of the structure would not be out of scale with the neighborhood.
6. In addition, the applicant proposes to build a 1,080 square-foot garage/recreation building on the other lot across the road on the south side of Lake Shore Drive. The proposed garage would be approximately 160 feet landward of the OHWM, set back about 20 feet from the road. Total site coverage within the shoreline area for the two lots would be 29.4%
7. Both parcels are situated on a steep slope with level areas near the road. The leading edge of the present cabin is on posts. However, the new house can be fit into the topography with minimal excavation. The plan to build the garage inside the zoning setback from the road is in response to the slope. There is currently a small graded level area used to store a boat on the south lot, but more extensive excavation will be needed for the proposed garage. Any outdoor parking will occur adjacent to the garage.
8. The property is located within a Rural Residential shoreline environment. Under the local shoreline master program (SMP), the residential setback from the OHWM is 50 feet. Under the Critical Areas Ordinance (CAO), a 100 foot buffer is established for lakeside areas. Therefore variances from both the SMP and the CAO are needed for the new house proposed in this case.

9. The planned garage is beyond both the shoreline and the critical areas setbacks and therefore does not require a variance from either the SMP or the CAO. As a normal appurtenance, the garage comes within the residential exemption from Shoreline Substantial Development Permit requirements. However, building the garage within the zoning setback will require an administrative variance -- a matter not addressed here.

10. A Fish and Wildlife Habitat and Geohazard Assessment, dated September 29, 2012, was prepared by Edison Engineering. The assessment, using best available science, concluded that the habitat impact can be rectified by rehabilitating the remaining buffer through planting. The assessment found that slopes on the site are stable, but recommended retaining trees where possible to avert erosion. Specific recommendations for buffer enhancement were made.

11. According to the Assessment, drainage problems are not anticipated so long as roof drainage from the house is conducted to energy diffusers at the lake on either side of the house and garage drainage is directed to the ditch along South Shore Drive.

12. Notice of the application was given as required by law. One comment letter was received from Thomas Howerton, a neighbor concerned with potential interference between water wells. The Health Department noted that septic systems have been approved for both applicant's and Howerton's properties with no conflicts identified. However, no water well applications have been submitted by either the applicant or Howerton. The Health Department said it could not speculate on possible conflicts with respect to well and septic functions on either site.

13. Appropriate notice was given of the public hearing. There was no public testimony at the hearing.

14. The SMP variance criteria for developments landward of the OHWM are as follows:

a.) That 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.

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 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 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 effects.

15. The SMP states in addition that: "in the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area."

16. The CAO lists the following variance criteria:

a.) The issuance of a zoning variance by itself will not provide sufficient relief to avoid the need for a variance to the dimensional setback and other requirements for the critical areas regulated by this Chapter.

b.) Preparation of a site assessment and mitigation plan by a qualified professional pursuant to the requirements of SCC 14.24.080 and all other applicable sections of this Chapter. The site assessment and mitigation plan shall be prepared used best available science.

c.) The conclusions of the site assessment must use best available science to support a modification of the dimensional requirements of this Chapter.

d.) The site assessment and mitigation plan demonstrate that the proposed project allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property.

e.) The reasons set forth in the application justify the granting of the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

f.) The granting of the variance will be consistent with the general purpose and intent of this Chapter, and will not create significant adverse impacts to the associated critical areas or otherwise be detrimental to the public welfare; provided, that if the proposal is within the special flood hazard area (SFHA), the applicant must demonstrate that the proposal is not likely to adversely affect species under the Endangered Species Act, or their habitat.

g.) The inability of the applicant to meet the dimensional standards is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line after the effective date of the ordinance codified in this Chapter.

h.) The granting of the variance is justified to cure a special circumstance and not simply for the economic convenience of the applicant.

17. The Staff Report reflects review of the application under both the variance SMP criteria and the CAO variance criteria. Based on this review, the Staff found that the proposal, as conditioned, satisfies these criteria and should be approved. 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.

18. The proposed new house will be compatible with neighboring development and will constitute a reasonable use of the property. The special circumstance of lot size is such that this use cannot be made consistent with the applicable setbacks from the waterfront established by the SMP and CAO. The owners did not create this special circumstance. Environmental impacts will not be substantial and can be mitigated by appropriate plantings.

19. 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), SCC 14.24.140(1)(b).

2. The variance requests are exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(6)(b).

3. The proposed the new cabin meets the criteria for a Critical Areas Ordinance variance. SCC 14.24.140(3).

4. The proposed new cabin meets the criteria for a Shoreline variance. SMP 10.03.

5. 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 applicants shall obtain all permits required for this undertaking and shall abide by the conditions of same.

3. The applicant shall comply with requirements of the Skagit County Department of Health.

4. The applicant shall comply with all applicable State and local regulations, including but not limited to water quality standards for surface and ground water, maximum environmental noise levels, erosion/sedimentation control measures, clean air requirements, critical areas and shorelines regulations.

5. Aesthetic impacts shall be minimized.

6. All plumbing, wiring and other utility lines shall be installed underground or otherwise rendered inconspicuous.

7. The applicant shall comply with the recommendations of the Fish and Wildlife Habitat and Geohazard Assessment by Edison Engineering, dated September 29, 2012.

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

8. The shoreline setback area shall be placed in a Protected Critical Area (PCA). The PCA shall be recorded with the County Auditor at the time of building permit application.

9. If the applicant proposes any modification of this proposal, he shall request and receive a permit revision from PDS prior to construction.

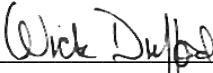
10. The project shall be commenced within two years of the approval of these variances and completed within five years thereof.

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

DECISION

The requested Shoreline Variance (PL12-0442) and Critical Areas Variance (PL12-0007) are approved, subject to the conditions set forth above.

DONE, this 17th day of September, 2013.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, County Staff, and parties of record, September 17, 2013

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