

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicants:** Dennis & Barbara Dekay
19300 64th Place NE
Kenmore, WA 98028
- Contact:** Jackie Chriest
33688 Bamboo Lane
Mount Vernon, WA 98274
- Request:** Shoreline Variance, PL14-0306
Critical Areas Variance, PL14-0305
- Location:** Shore of Lake Cavanaugh, located at 34245 South Shore Drive within the SW 1/4 Sec. 26, T33N, R6E, W.M. Parcel #P66550.
- Shoreline Designation:** Rural Residential
Land Use Designation: Rural Village Residential
- Summary of Proposal:** To demolish a small cabin and replace it with a new two-story residence. With removal of the deck, the setback from the lake shore will increase modestly. The shore setback will be greater than the average for the area. The footprint of the house will be slightly larger than the neighborhood average, but will be in keeping with the trend of recent development.
- SEPA Compliance:** Exempt
- Public Hearing:** April 8, 2015. Testimony by County and Applicant. No public testimony. Staff recommended approval.
- Decision/Date:** The application is approved, subject to conditions. April 13, 2015.
- Reconsideration/Appeal:** (1) Shoreline Variance. Reconsideration may be requested within five days of this decision. Appeal is to County Commissioners within five days of this decision, or decision on reconsideration if applicable.
(2) Critical Areas Variance. Reconsideration may be requested within 10 days of this decision. Appeal is to County Commissioners within 14 days of this 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. Dennis and Barbara Dekay (applicants) seek a Shoreline Variance and a Critical Areas Variance in order to replace an old cabin with a new home on the shores of Lake Cavanaugh.

2. The site is at 34245 South Shore Drive, within SW 1/4 Sec. 26, T33N, R6E, W.M. The Parcel Number is P66550. The property is within a Rural Residential shoreline designation and a Rural Village Residential zoning designation.

3. The lot is one of the many small lots created along the lake shore prior to the passage of the Shoreline Management Act. It is 63 feet wide by approximately 163 feet deep, with an area of roughly 10,000 square feet. The lot is between South Shore Drive and the Ordinary High Water Mark (OHWM) of the lake. There is a 776 square foot cabin on the site, served by a septic system located between the cabin and the road.

4. The plan is to demolish the cabin and replace it with a new single family residence, containing approximately 2,640 square feet on two floors. The footprint would be 1,680 square feet. Attached to landward side of the new home would be a 720 square-foot garage with additional living space. The existing septic system can accommodate the proposed development.

5. The existing cabin is located 38.13 feet from the OHWM, but has a lakeside deck situated about 25.63 feet from the OHWM. The proposed replacement structure would remove the deck, placing the house 37.6 feet from the OHWM. This would be greater than the average shore setback for the area of 33.4 feet. The proposed residence and garage would encroach 18 feet into the 150 foot buffer for a fish bearing stream located offsite to the north.

6. The standard shoreline setback at this location is 50 feet from the OHWM and the standard critical areas shore buffer is 100 feet from the OHWM. Thus, a variance is needed for the proposed shoreline setback and critical areas variances are needed for both the shore buffer and the stream buffer.

7. The subject lot does not have an upland component across South Shore Drive, so all development must be accommodated on the lakefront area. Nevertheless, parking is currently available on the lot outside of the County road right-of-way and will continue to be so.

8. The average size of homes within 300 feet of the subject site along this section of waterfront is about 1,060 square feet of living space. The trend is to replace older cabins with larger dwellings. The footprint here would be slightly larger than the current average, but that average incorporates older smaller structures. In the Staff's opinion this new home would be compatible with the neighborhood. The two-story house would not interfere with any neighboring views.

9. Construction of the residence would result in the removal of a few trees. A Fish and Wildlife Habitat Assessment was prepared by Edison Engineering and plantings were recommended for the remaining buffer area as mitigation. The remaining buffer will need to be identified and managed as a Protected Critical Area.

10. A letter of completeness of this application was issued on October 2, 2014. Notice of Development was published on October 9 and 16, 2014. Notification was given by mail to all property owners within 300 feet of the property. Seven public comment letters were received. All of them were in general support.

11. The application was circulated to various County departments and to other agencies. No County departments objected. No comments were received from Federal, State or Tribal natural resource agencies.

12. The Staff reviewed the proposal in light of the local Shoreline Master Program (SMP) and the Critical Areas Ordinance. These reviews concluded that the project, as conditioned, would be consistent with the provisions of the applicable regulations, except for the setback/buffer requirements. The analysis also concluded that the relevant criteria are met for the setback/buffer variances requested. The Hearing Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

13. What the applicants propose is a reasonable use of the property.

14. 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 proceeding. SMP 10.02(3), SCC 14.24.140(1)(b).

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

3. The project, as conditioned, is consistent with the criteria for approval of a Shoreline Variance. SMP 10.03(1).

4. The project, as conditioned, is consistent with the criteria for approval of a Critical Areas Variance. SCC 12.24.140(3).

5. The variance criteria of Chapter 14.10 SCC have been met. The Critical Areas Variance is the minimum variance that will make possible the reasonable use of the property. The variance will be in harmony with the general purpose and intent of Title 14 SCC and other provisions of the County Code.

6. 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 residence structure shall not exceed an average height of 30 feet.
3. The applicants shall obtain all other required approvals and shall abide by the conditions of same.
4. The applicants shall comply with all relevant Health Department regulations.
5. The applicants shall comply with all other applicable state and local regulations, including but not limited to, temporary erosion/sedimentation control measures in accordance with Chapter 14.32 SCC, zoning ordinance requirements (Chapter 14.16 SCC), state surface and ground water quality standards (Chapter 173-200 and 173-201 WAC), maximum environmental noise levels (Chapter 173-60 WAC).
6. The recommendations of the Edison Engineering site assessment, as amended, shall be considered conditions of approval. The mitigation plan for enhancement of the remaining shoreline buffer area shall be fully implemented.
7. All mitigation plants shall maintain a survival rate of 100% following the first year and 80% following years three and five. If the plants do not meet those survival rates, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.
8. The setback/buffer areas shall be placed in a Protected Critical Area (PCA) per SCC 14.24.090. The PCA shall be recorded at the time of building permit application.
9. The applicants shall submit a copy of this decision with the building permit application.
10. The project shall be commenced within two years of the shoreline variance approval and completed within five years thereof.
11. If the applicants propose any modification of the subject proposal, they shall request a permit revision from Planning and Development Services prior to construction.
12. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Shoreline Variance (PL14-0306) and Critical Areas Variance (PL14-0305) are approved, subject to the conditions set forth above.

DONE, this 13th day of April, 2015.



Wick Dufford, Hearing Examiner

Transmitted to Applicants, April 13, 2015.

See Notice of Decision, Page 1, for appeal information.