

BEFORE THE SKAGIT COUNTY HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION

Applicant: Buchan Beach Condominium
c/o Alan G. Buchan
2411 Skyline Way #208
Anacortes, WA 98221

File Nos: PL06-1127
PL06-1128

Requests: Zoning Variance
Shoreline Variances

Location: 11330 Marine Drive, within a portion of Sec. 34,
T35N, R1E, W.M.

Parcel Nos: P114971, P114972, P114974, P114975, P114976

Land Use Designations: Zoning: Rural Intermediate (RI)
Shoreline: Rural Residential

Summary of Proposal: (1) A zoning variance is sought to allow five contiguous substandard lots to be reconfigured into five smaller lots with the balance allocated to open space, using the CaRD process. (2) Two shoreline variances are sought to allow site coverage of approximately 57% on the new small lots and to allow four-foot side setbacks on interior lots.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on June 13, 2007.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Buchan Beach Condominium, by Alan G. Buchan, President, seeks variances to permit the reconfiguration of lots for residential use on property bordering Burrows Bay on Fidalgo Island.
2. The property covers 3.19 acres located at 11330 Marine Drive, within a portion of Sec. 34, T35N, R1E, W.M. The present zoning is Rural Intermediate (RI). The shoreline designation is Rural Residential.
3. The maximum allowable density under a CaRD in the RI zone is one dwelling unit per 2.5 acres. This standard would require 12.5 acres for five houses. See SCC 14.18.310.
4. The maximum lot coverage standard for the Rural Residential environment is 30% of the lot area. The standard shoreline side setback for single family residential homes in the Rural Residential designation is eight feet. See SMP 7.13(2)(C), Table RD.
5. The property consists of five pre-existing legal lots of record. They are identified as Lots 48-52 of the Plat of Anaco Beach. The property was platted long before zoning to Skagit County. All of the lots are presently substandard in size. The present lot numbers are P114971, P114972, P114974, P114975, and P114976.
6. The property was purchased by the Buchan family in 1931. Three houses were built shortly thereafter. Two additional homes were built in the 1950's and 60's. When these houses were built, no attention was paid to formal lot lines since the property was all in one ownership.
7. The five existing residential structures have utilities in place. They are served by a shared private asphalt driveway. However, not all of the structures are on a separate existing legal lot.
8. Five existing Buchan heirs owned the property in common until 1999 when they formed the Buchan Beach Condominium. The condominium form provided for separate ownership of each cabin site retaining common ownership for the remainder. Five 3,200 square foot home units were established, each containing one of the existing structures. The condominium form attempted to organize the homes into smaller building areas and to preserve the remainder in open space.
9. Until now, there has been no land division that would officially provide separate lots for each of the cabin sites. The present plan here is to create five new lots, each slightly larger than 5,000 square feet, each of which can contain a separate beach cabin. Under this plan, the two most shoreward of the existing houses would be removed

and replaced further inland. The remainder of the property would be placed in a separate open space lot.

10. Marine Drive on the east is substantially higher than the waterfront area. Lot 48 on the north is a wooded bluff that drops off to the beach and the home sites to the south. Surface water drainage from other higher properties is funneled under Marine Drive and collected in a settling pond on the property which discharges to underground piping leading to the gravel beach.

11. A Geotechnical report and a Fish and Wildlife assessment were prepared for this project by professionals. Consistent with their evaluations, the identified critical areas and buffers within this lot and a 66-foot shoreline buffer would be set aside for permanent protection as Protected Critical Areas (PCAs). These include geo-hazard areas, pond areas, and related buffers. The rest of the open space lot would be designated OS-PA (Open Space- Preservation Area). The effect would be to increase the amount of property in protected status.

12. Based on topography, the low lying area where the homes were originally built is the most logical place for homes to be. The new lots would essentially legitimize this initial choice of cluster development. The new building lots would be slightly larger than the original condominium units, meeting the minimum lot size for CaRD lots. They would also provide for a uniform 66-foot setback from the Ordinary High Water Mark – a distance that would more than meet the applicable shoreline setback standard for the area.

13. The proposal is to allow the five houses on the 3.19 acre site, thus varying from the density established for CaRD development in the RI zone. The proposal is also to allow site coverage on the various building lots to be 57% and to allow side-yard setbacks of four feet for all but the external boundaries of the original 3.19 acre site.

14. The surrounding area is rural and residential in nature, consisting of smaller parcels of similar size along the Burrows Bay shoreline developed prior to present zoning and present shoreline regulations. The majority of lots in the area are smaller than the current 2.5 acre lot size for the RI zone. The development authorized by the proposed variances – 406 feet of beach front with five homes – would be consistent with the pattern of development already established in the neighborhood.

15. In fact, existing forest shields the property from the Marine Drive and the houses on the property are obscured from neighboring homes on the north and east by hillsides and natural vegetation. The property adjoining to the south contains a beach house built closer to the OWHM than those on the subject lots. Immediately to the south of this property is the large 1950's Del Mar Development which has smaller lots and denser occupancy.

16. The variances would effect only minor changes to the status quo of many years. The density of development would not, in fact, be increased. There would still be five houses. The shoreline setback situation would be improved, but some relocating and upgrading of the homes would be permitted. Overall, the proposal would transform a pre-existing non-conforming development into a conforming development with a separate lot for each house. The number of building lots would stay the same, but substantial open space preservation would be achieved.

17. The regulations that resulted in the non-conformity of the developments were adopted long after the present home configuration was in place. Those changes were not, of course, the result of actions of the applicants.

18. The side yard setback variance will allow existing development to meet side yards standards. The lot coverage variance will allow modest rebuilding consistent with development in the neighborhood to upgrade beach houses that in some cases are now over 70 years old.

19. Five letter writers (two of whom wrote two letters) opposed the applicant's request. Three of them testified in opposition. Their primary concern is that the density will exceed the standard for development of a CaRD in the RI zone. The fear is that this will set a precedent for other variances from the CaRD regulations in the future. The opponents also feel that the proposal is contrary to Growth Management Hearings Board admonitions against increased density.

20. One person, a next door neighbor to the south, wrote in support. He said that his property is the only property in the area that has any exposure to or view of the Buchan houses and that he welcomes their proposal. Moreover, he stated that their proposed lots fit in with the existing beach house development of the surrounding area.

21. The Examiner is convinced that the present request for variances rests on site specific facts relating to historic development that are not likely to be duplicated. Moreover, there will be no change in actual density. Variances rest of their individual facts. The likelihood that this request will provide an adverse precedent for future development is unlikely.

22. The criteria for approval of a variance are set forth at SCC 14.10.030(2). That subsection requires a narrative statement included in the application that demonstrates that the requested variance conforms to the following standards:

(a) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.

(b) Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties

in the same district under the terms of the terms SCC Titles 14 and 15.

(c) The special conditions and circumstances do not result from actions of the applicant.

(d) The granting of the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

(e) [see Shoreline Variance criteria below]

(f) If applicable, an explanation as to why, if a variance is denied, the applicant would be denied all reasonable use of his or her property.

23. Variances from the Skagit County Shoreline Management Master Program for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

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

b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for 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 the adjacent properties or the shoreline environment designation.

d. The variance granted 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. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

24. The Staff Report thoroughly analyzes the application in light of the above zoning and shoreline variance criteria and concludes that, as conditioned, the project will comply with the criteria. The Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

25. The Examiner finds that the reasons set forth in the application justify the variances sought. The variances are the minimum that will make possible the reasonable development of the land. The granting of the variances is in harmony with the general purpose and intent of the Unified Development Code and will not be injurious to the neighborhood or otherwise detrimental to public welfare.

26. 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 subject matter of these proceedings. SCC 14.06.050(1)(b)(i), SMP 10.02(3).

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

3. The project, as conditioned, will be consistent with the criteria for both zoning and shoreline variances. SCC 14.10.030(2), SMP 10.03(1). The findings required by SCC 14.10.040 have been made.

4. Any findings herein which may be deemed conclusions are hereby adopted as such.

CONDITIONS

1. The applicant shall obtain all other required permits and approvals from the appropriate jurisdiction.

2. The variance number and date of approval shall appear on the face of the land division map.

3. The CaRD process shall be followed and shall comply with all remaining applicable requirements of the County Code.

4. Critical areas reviews have been preliminarily approved for the variance requests. More detailed information may be requested with the land division review.

5. The proposed lots may require modification to exclude critical areas buffers from the individual building envelopes, if further review so indicates. If required, such modifications shall be reflected on the land division map.

6. The CaRD approval, if given, shall mandate compliance with all applicable requirements of various County Departments and Divisions, including health, water resources and public works requirements.

7. Except as otherwise allowed by these variances, the residential development of the property within 200 feet of the shoreline of Burrows Bay shall meet all dimensional requirements of SMP 7.13(2)(C), Table RD.

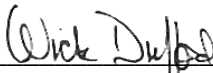
8. The project shall otherwise comply with all requirements of the Shoreline Master Program and the Shoreline Management Act.

9. The property division shall be completed within five years of the final approval of these variances. For this family project, any residential development relying on these variances shall be undertaken within 15 years of the date of final approval of these variances.

10. Any failure to comply with a condition of approval may result in permit revocation.

DECISION

The requested zoning and shorelines variances are approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: July 23, 2007

Date Transmitted to Applicant: July 23, 2007

RECONSIDERATION/APPEAL- ZONING

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

RECONSIDERATION/APPEAL-SHORELINES

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 RCW 90.58.140.