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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: Order on Shoreline Variance Permit SL 01 0894

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: Tom and Gerb Hess

ASSESSOR PARCEL NO: P69421

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located approximately ¼ mile north of the intersection of Downey Road and Channel Drive, LaConner, WA; a portion of Section 13, Township 34 North, Range 2 East, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Tom and Gerb Hess
13493 Bridgeview Way
Mount Vernon, WA 98273

File No: PL 01-0894

Request: Shoreline Variance

Location: Along the shore on the Swinomish Channel,
about ¼ mile north of the intersection of Downey
Road and Channel Drive, within a portion of
Sec. 13, T34N, R2E, WM.

Summary of Proposal: To construction a single-family residence 26
feet from the Ordinary High Water Mark with a
total site coverage of 59%. Also to place a non-attached
garage that is 21 feet above average grade.

Shoreline Designation: Rural Residential

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on May 8, 2002.

Decision: The application is approved, subject to conditions.



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FINDINGS OF FACT

1. Tom and Gerb Hess (applicants) seek a Shoreline Variance to construct a single-family residence that would be closer to the shore than the standard shoreline setback and that exceeds the applicable lot coverage. They also want to build a detached garage/shop that exceeds the maximum residential height limit.

2. The site is a waterfront lot on the Swinomish Channel located about ¼ mile north of the intersection of Downey Road and Channel Drive, within a portion of Sec. 13, T34N, R2E, WM. The shoreline environment designation is Rural Residential. The lot is a rectangle with the channel on the west and Channel Drive on the east.

3. Channel Drive is a County road serving the existing development of Skagit Beach. The subject lot is one of the remaining vacant lots within the Skagit Beach subdivisions. Skagit Beach was developed in the 1960's. The majority of homes were built with a setback of around 25 feet from the Swinomish Channel. Much of this development was before the adoption of the County's Shoreline Master Program (SMP).

4. The SMP establishes a 50-foot shore setback in the Rural Residential environment. SMP 7.13.(2)(C), Table RD. The applicants hope to build a residence closer to the Ordinary High Water Mark (OHWM), in keeping with the general development pattern.

5. The maximum allowed Rural Residential site coverage is 30% under the SMP. The maximum allowable height for an accessory structure is 15 feet. SMP 7.13(2)(c), Table RD. The applicants project would cover 59% of the site. The detached garage would be 21 feet high.

6. The lots of Skagit Beach are, for the most part, composed of fill that was dumped along the side of the channel during long-past dredging operations. Natural growth on this surface has largely been limited to grass and weeds. Development on the lots has been and is constrained by the Channel on one side and the County road on the other. The lots are rather small.

7. The OHWM on this shore is, by and large, defined by the rip-rap bank along the channel's edge. The two homes north of the Hess lot have a 27-foot setback from the OHWM. The lot to the south is vacant. The two nearest homes to the south have a 30-foot shore setback. The applicants have agreed to a 27-foot shore setback in order to blend with the adjacent development. This would be consistent with the request of several neighboring owners.

8. Development on this lot is restricted between the channel and the public road. There is a 25-foot setback from the road. In addition to siting the residential structures,



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space must be provided in the rear of the lot for the components of the septic system. Finally Channel Lane, a platted local driveway easement, bisects the property. The split lot further constrains potential development.

9. A 27-foot shore setback in this case would be consistent with the general pattern of development and would not interfere with anyone's lateral view.

10. Lot coverage limitations have frequently been exceeded in Skagit Beach because the lots are often too small to accommodate all of the impervious surfaces commonly developed (driveways, patios, sidewalks, plus residential footprints) with the 30% limitation. Lot coverage of existing residences in the vicinity here generally exceed the 30% required by the SMP. Moreover, in the instant case, the driveway easement serving other lots reduces the developable space by 11%. Under the circumstances, the requested site coverage is in keeping with other development in the area and not unreasonable.

11. The detached garage/shop is to be placed toward the rear of the split lot. It would be somewhat higher than the normal accessory, but will have the same roof pitch as the residence. It will not be higher than the house and at its separate location will appear height appropriate.

12. A Fish and Wildlife Site Assessment was performed for this project by Northwest Wetland Solutions. The report concluded that there will be little temporary or long-term environmental impact from the proposal, but provided suggestions for environmental mitigation. The applicants responded with a mitigation plan, dated March 27, 2002. Also a Protected Critical Area is to be established and recorded for the area waterward of the developed area of the site.

13. For development landward of the OHWM, the criteria for approval of a variance are set forth at SMP 10.03(1). The applicant must prove:

a. That the strict application of the bulk, dimensional or performance standards set forth in this 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 in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

d. That the variance 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. That the public interest will suffer no substantial detrimental effect.

In the granting of variance permits, the cumulative impact of additional requests for like in the area is to be considered.

14. The Staff Report analyzes the project in light of these criteria and concludes that the project will meet them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

15. 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 parties and subject matter of this proceeding.

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

3. The proposal, as conditioned, complies with the Critical Areas Ordinance.

4. Residential development is a permitted use in the Rural Residential shoreline designation. SMP 7.13.2(2). The proposed development does not conflict with the policies of the Shoreline Management Act or of the SMP.

5. The proposed home and garage/shop will be compatible with the overall pattern of development in the neighborhood. The proposal represents a reasonable use of the property that would be significantly interfered with if the dimensional standards of the Master Program were strictly applied.

6. No adverse impacts have been identified on adjacent parcels or on the shoreline environment from allowing the requested variances.

7. As conditioned, the proposed development meets the criteria for Shoreline Variances as to shore setback, lot coverage and height.

8. The following conditions should be imposed.

(1) The permittee shall strictly adhere to the proposal made, except as it may be modified by these conditions.



- (2) The setback from the OWHM to the residence shall be 27 feet. The site coverage shall not exceed 59%. The height of the detached garage/shop shall not exceed 21 feet.
- (3) The permittee shall comply with the mitigation measures recommended in the Fish and Wildlife Assessment, dated November 8, 2001, including using proper sedimentation and erosion control measures during construction
- (4) The permittee shall comply with the mitigation plan proposed by letter dated march 27, 2002.
- (5) A Protected Critical Area, as described, shall be filed with the County Auditor.
- (6) The permittee shall provide proof of the availability of adequate potable water prior to obtaining a building permit.
- (7) Prior to construction, the permittee shall obtain a building permit and all other necessary approvals.
- (8) If the permittee proposes modifications to the subject proposal, a shoreline permit revision shall be obtained from the Planning and Permit Center prior to construction of same.
- (9) Construction material and other debris shall not be allowed to enter the water.
- (10) Approval of these variances shall be obtained from the Department of Ecology. After such approval is obtained, construction shall commence within two years, and project completion shall be achieved within five years.
- (11) Violation of any condition of approval may result in permit revocation.

9. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The requested Shoreline Variances from dimensional requirements of the Shoreline Master Program are granted, subject to the conditions set forth in Conclusion 8 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: June 6, 2002

Copy transmitted to Applicant: June 6, 2002

Attachment: Staff Report

RECONSIDERATION/APPEAL

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center 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 the Planning and Permit Center within five (5) days after the date of decision, or decision on reconsideration, if applicable.



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3 **SKAGIT COUNTY PLANNING & PERMIT CENTER**

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5 **FINDINGS OF FACT**

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7
8 REVIEWING AUTHORITY: Skagit County Hearing Examiner

9
10 PUBLIC HEARING DATE: May 8, 2002

11
12 APPLICATION FOR: Shoreline Variance #PL 01-0894

13
14 APPLICATION DATE: November 16, 2001

15
16 APPLICANT: Tom & Gerb Hess
17 13493 Bridgeview Way
18 PARCEL# 69421 Mount Vernon, WA 98273

19
20 PROJECT DESCRIPTION: The construction of a single-family residence 26 feet from
21 the OHWM with a total site coverage of 59 % within in a Rural Residential shoreline
22 designation that normally requires a 50-foot minimum setback and a allows a maximum
23 site coverage of 30%. An additional variance is requested for placement of a non-attached
24 garage at a height of 21 feet above average grade.

25
26 The proposed project is located approximately ¼ mile north of the intersection of
27 Downey Road and Channel Drive, LaConner, within a portion of Section 13, Township
28 34 North, Range 2 East, W.M., Skagit County. The subject proposal is located on the
29 shoreline of the Swinomish Channel designated Rural Residential under the Shoreline
30 Master Program. P#69421.

31
32 The proposal triggers the need for a shoreline variance because:

- 33 1. The minimum shoreline setback from the OHWM in the rural residential shoreline
34 designation is 50 feet (see SCSMMP 7.13(2)© Table RD).
35 2. The maximum allowable "developed" site coverage in the Rural Residential shoreline
36 designation is 30% (see SCSMMP 7.13(2)© Table RD).
37 3. The maximum allowable height for a accessory structure (garage) in shoreline
38 jurisdiction is 15 feet (see SCSMMP 7.13(2)© Table RD).

39
40 PROJECT LOCATION: The proposed project is located approximately ¼ mile north of
41 the intersection of Downey Road and Channel Drive, LaConner, within a portion of
42 Section 24, Township 34 North, Range 2 East, W.M., Skagit County. The subject
43 proposal is located on the shoreline of the Swinomish Channel designated Rural
44 Residential under the Shoreline Master Program. P#79571.

45
46 RECOMMENDATION: **Approval**, with conditions stated at the end of the report.

1 EXHIBITS:

- 2
- 3 1. Staff report
- 4 2. November 8, 2001 Fish & Wildlife Report prepared by Northwest Wetland
- 5 Solutions.
- 6 3. November 16, 2001, Shoreline Variance application, a narrative, ownership
- 7 certification and photos.
- 8 4. January 31 and February 7, 2002 Notice of Development.
- 9 5. March 15, 2002 technical team comment from Joan Velikanje of the Washington
- 10 State Department of Ecology (DOE).
- 11
- 12
- 13

14 STAFF FINDINGS:

- 15
- 16 1. The application has been advertised in accordance with Section 9.04 of the Skagit
- 17 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
- 18
- 19 2. The subject proposal is located on the shoreline of a vacant lot on the Swinomish
- 20 Channel in an area designated as Rural Reserve by the Skagit County
- 21 Comprehensive Plan and the Skagit County Zoning Ordinance. The property is
- 22 designated as Rural Residential in the SCSMMP.
- 23
- 24 3. The property is rectangular in shape with the Swinomish Channel to the west and
- 25 Channel Drive to the east. The property is bisected in half by Channel Lane which
- 26 links up with Channel Drive directly to the east. The entire area is very flat and
- 27 was built mainly on dredge spoils from the channel that were deposited over
- 28 many years. Channel View Drive is the sole access to the vicinity and the entire
- 29 residential area is flanked by agricultural land to the east.
- 30
- 31 4. Staff determined that the subject proposal required a Fish & Wildlife Site
- 32 Assessment/Habitat Management Plan as required in 14.24, 510 & .520 of the
- 33 Skagit County Critical Areas Ordinance (CAO). The report identified little
- 34 temporary or long-term impact of the proposal if the recommended mitigation
- 35 measures were followed. The recommended measures are:
- 36 a)
- 37 5.
- 38
- 39 6.
- 40 7. due to the existing "build-out" of the area. The following mitigation measures
- 41 were recommended to minimize negative impacts:
- 42 a) The area landward of the OHWM should be designated as a Protected Critical
- 43 Area (PCA) consistent with the attached site plan and recorded with the
- 44 County Auditors office as required in SCC 14.06.145.
- 45 b) Any wet season construction shall be accompanied by the implementation of a
- 46 temporary erosion control plan. Site plan conditions should be monitored



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1 during construction and silt fences utilized as appropriate. Vegetation removal
2 should be minimized to the extent practicable. The PCA should be replanted
3 with native species as specified in the Plant Plan. All bare soils should be
4 covered with straw and permanently re-vegetated by seeding with a mixture of
5 native grass species. This can be accomplished by hand.

6
7 The Fish & wildlife site assessment was circulated for Technical Team review
8 from September 26, 2001 to October 11, 2001 per SCC 14.24.530(2). No
9 comments were received.

10
11 8. The proposal is categorically exempt from the State Environmental Policy Act
12 (SEPA) as noted in WAC 197-11-800(1)(b)(I) regarding residential structures.

13
14 9. Mr. & Mrs. Corbin sent a letter supporting the proposal. Larry Jensen of Triple J
15 Enterprises submitted a letter expressing concern that during "dry" times of year
16 water allocation on the existing water line is given first priority to residences in
17 the area and secondly to agricultural operations. Mr. Jensen suggest that the
18 applicant commit to paying a pro-rated share of upgrading the water line to meet
19 the additional demand being put on the system. In response to the comment, staff
20 recommends that the applicant must provide proof that water service is available
21 from the local water purveyor prior to issuance of the shoreline permit.

22
23 10. Staff determined that the proposal is not located on a Shoreline of Statewide
24 Significance.

25
26 11. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline
27 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits
28 reads:

29
30 Variance permits for development to be located landward of the ordinary high
31 water mark (OHWM), except within areas designated marshes, bogs or swamps
32 pursuant to Chapter 173-22 WAC, may be granted provided the **applicant can**
33 **meet all the following criteria; the burden of proof shall be on the applicant.**

34
35 a. **That the strict application of the bulk, dimensional or performance**
36 **standards set forth in this Master Program precludes or significantly**
37 **interferes with a reasonable use of the property not otherwise**
38 **prohibited by this Master Program.**

39 *The parcel is bordered by the Swinomish Channel on the west and*
40 *Channel Drive on the east. Side yard (8feet) and road setbacks (25 feet) to*
41 *the east as well as allowing space for drain field placement and driveway*
42 *access make it difficult to meet the required shoreline setbacks.*

43
44 b. **That the hardship described above is specifically related to the**
45 **property and is the result of unique conditions such as irregular lot**
46 **shape, size or natural features and the application of this Master**



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1 **Program and not, for example, from deed restrictions or the applicant's**
2 **own actions.**

3 *The hardship is due to the lot shape and lot location in relation to the*
4 *channel and the road.*

- 5
6 c. **That the design of the project will be compatible with other permitted**
7 **activities in the area and will not cause adverse effects to adjacent**
8 **properties or the shoreline environment designation.**

9 *The surrounding area has been developed for rural residential use as*
10 *demonstrated by the Residential zoning designation. All residences within*
11 *300 feet of the side property lines are also within the 50-foot setback buffer*
12 *due to pre-shoreline management development patterns. Site coverage*
13 *development percentages in the adjacent area all exceed the 30% maximum*
14 *required by the SCSMMP. No adverse impacts have been identified on*
15 *adjacent parcels or on the shoreline environment.*

- 16
17 d. **That the variance authorized does not constitute a grant of special**
18 **privilege not enjoyed by the other properties in the same area and will**
19 **be the minimum necessary to afford relief.**

20 *The issuance of a variance for this proposal would be consistent with the*
21 *relatively high-density development on Channel Drive. Adjacent homes*
22 *enjoy similar setbacks from the Channel and it appears that granting of this*
23 *request would not constitute a "grant of special privilege." Further, it*
24 *appears to staff that based on the existing circumstances of home*
25 *placements and physical constraints such as the channel and the road that*
26 *the proposal would provide the "minimum relief necessary" for the*
27 *applicant to build a single family residence in a shoreline location that*
28 *allows such development.*

- 29
30 e. **That the public interest will suffer no substantial detrimental effect.**

31 *Any possible detrimental effects however how remote, should be mitigated*
32 *through compliance with the conditions placed on the development as*
33 *recommended by staff and the environmental consultant.*

34
35
36 **REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.**

37
38 The proposal has been reviewed for consistency with SMP Chapter 7.13 Residential
39 Development as defined in Chapter 3.03. The entire chapter 7.13 of the SCSMMP regarding
40 Residential Development is included as Attachment "A" of the staff report, staff has
41 summarized the policies involved.

42 Staff determined that the proposal does not conflict with the **general policies** regarding
43 residential development, coordination, optimum use, joint use, public access, public use,
44 natural resource processes, hazardous areas, water quality & quantity, PUD's, floating
45 homes, community services, Shoreline Management jurisdiction, location and design and
46 construction and impacts. Staff has further determined that the proposal complies with all



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SCSMMP regulations regarding shoreline designation, general regulations, accessory uses, hazardous areas, shore defense works, landfilling, public access, fragile areas, utilities, roads and parking areas, drainage, sewage and screening **except** shoreline setbacks.

The following inserts from the Regulation section are considered below with staff notes in italics:

2. REGULATIONS

A. Shoreline Area

(2) Rural Residential

(a) Residential development is permitted subject to the General and Tabular Regulations.

B General

(9) Shoreline setback;

Residential structures shall be setback common to the average of setbacks for existing dwelling units within 300 feet of side property lines or a minimum setback distance as Required in Table RD, whichever is greater.

All of the residences within 300 feet of the side property lines are located within 50 feet of the OHWM, and the minimum setback is 50 feet from the OHWM in the Rural residential shoreline designation, therefore, the "whichever is greater" in this case would be the 50 foot minimum required in Table RD. Hence, the total variance sought from the OHWM for the new residence is 15 feet for the residence.

C. Tabular Regulations

(1) Shore setbacks (in feet)

(d) Accessory uses – Rural Residential- 35 feet.

The proposal request placement of a patio as close as 14 feet to the OHWM, thereby requiring a variance for an accessory use of 21 feet.

(4) Site coverage –Maximum percent of the shoreline area of the site to be developed for:

(a) Single family and duplex units. *In the Rural Residential designation the maximum percentage is 30%. The applicant has requested a total of 44%.*

RECOMMENDATION

Based on the above findings, the Skagit County Planning and Permit Center would recommend for **approval** of a Shoreline Variance Permit subject to the following conditions:

1. The applicant shall submit a planting plan for the lot in question, clearly marking the land waterward of the proposed structure as a Protected Critical Area and shall show the types and location of native vegetation to be planted. The site plan must be recorded by the County Auditor's (SCC 14.06.145(2)-office prior to issuance of a building permit.
2. The applicant must obtain a Skagit County Building Permit and receive all the necessary approvals.



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1 3. The subject proposal shall comply with the Skagit County Shorelines Management
2 Master Program and the Shoreline Management Act RCW 90.58.
3

4 4. The applicant shall strictly adhere to the project information (site diagram) submitted
5 for this proposal. If the applicant proposes any modifications of the subject proposal,
6 he/she shall request a shoreline permit revision from this office prior to the start of
7 construction.
8

9 5. The applicant shall comply with the Fish & Wildlife Site Assessment
10 recommendations in regards to utilizing proper sedimentation and erosion control
11 measures during construction. The recommendations included:
12

13 a) The area landward of the OHWM should be designated as a Protected Critical
14 Area (PCA) consistent with the attached site plan and recorded with the
15 County Auditors office as required in SCC 14.06.145.

16 b) Any wet season construction shall be accompanied by the implementation of a
17 temporary erosion control plan. Site plan conditions should be monitored
18 during construction and silt fences utilized as appropriate. Vegetation removal
19 should be minimized to the extent practicable. The PCA should be replanted
20 with native species as specified in the Plant Plan. All bare soils should be
21 covered with straw and permanently re-vegetated by seeding with a mixture of
22 native grass species. This can be accomplished by hand.
23

24 6. The applicant must provide proof in writing to the Skagit County Planning &
25 Permit Center that water service is available from the local water purveyor prior
26 to issuance of the shoreline permit.
27
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34

35 Prepared By: DD

36 Approved By:

37 Date: November 15, 2001

38 Amended: