

WHATCOM COUNTY HEARING EXAMINER

RE: Shoreline Conditional Use) SHC2017-0008
Zoning Variance) VAR2017-0004
Application for)
)
Karen Lindahl) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
"Krieg Family Trust") AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Shoreline Conditional Use Permit and a Zoning Variance Permit to construct an attached garage to the existing single-family residence that is non-conforming with respect to Habitat Conservation Area buffer. Additionally, the Zoning Variance Permit is required expand within the required road setback to create an off-street parking area adjacent to the right-of-way.

Decision: The requested Permits are approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicants: Karen Lindahl for Krieg Family Trust

Property Address: 2588 Lake Whatcom Boulevard
Bellingham, Washington 98229

Legal Description: Within Section 36, Township 38 North, Range 03 East, W.M.

Assessor's Parcel Number: 380336 434196

Adjacent Water Body: Lake Whatcom
Shoreline Designation: Shoreline Residential
Statewide Significance: Yes
Zoning: Residential Rural
SEPA Review: Categorically Exempt pursuant to WAC 197-11-800

Authorizing Ordinances:

WCC 23.50 Applicability
WCC 23.70.010 Administrator
WCC 20.32 Residential Rural
WCC 20.84 Variances

Applicable Shoreline Provisions:

WCC 23.10 Governing Principles
WCC 23.20 Goals and Objectives
WCC 23.30.060 Shoreline Residential Area
WCC 23.50.070 Nonconforming Development
WCC 23.60 Shoreline Permits and Exemptions
WCC 23.60.040 Conditional Use Permit Criteria
WCC 23.60.100 Consolidated Permit Review
WCC 23.60.130 Public Hearings
WCC 23.90 General Policies and Regulations
WCC 23.90.130 Shoreline Bulk Provisions
WCC 23.100.110 Residential
WCC 23.110 Definitions

Legal Notices: Posted – Notice of Public Hearing, June 14, 2018
Mailed – Notice of Application, October 27, 2017
Notice of Public Hearing, June 7, 2018
Published – Notice of Application, May 17, 2017
Notice of Public Hearing, June 14, 2018

Hearing Date: June 27, 2018

Parties of Record

Karen Lindahl
21639 Prairie Road
Sedro Woolley, WA 98284

Sam McDaniel, Planner
Andrew Hicks, Shoreline Administrator
Planning and Development Services

Exhibits

- 1 Master Land Use Application with attachments
 - 1-1 Shoreline Conditional Use Supplemental Application
 - 1-2 RCW 90.58.020
 - 1-3 Guidelines for Finding Property Owners for Hearing Notices
 - 1-4 Fee Responsibility
 - 1-5 Property Owners Address Mailing Labels
 - 1-6 Preliminary Stormwater Proposal
 - 1-7 Preliminary Traffic & Concurrency Information
 - 1-8 Aerial Site Photo
 - 1-9 Warranty Deed, dated July 11, 1955
 - 1-10 Quit Claim Deed, Grantors, John and Frances Krieg, August 17, 1992
 - 1-11 PDS Comment Form Letter Notice of Application, October 27, 2017 to Property Owners
 - 1-12 SHC2017-0008 Agency Distribution List
 - 1-13 SHC2017-0008 Determination of Completeness, dated August 11, 2017

- 2 Master Variance Application with attachments
 - 2-1 Fee Responsibility
 - 2-2 Agent Authorization Form
 - 2-3 PDS Instructions for Obtaining Property Owners' Addresses w/in 300-1,000 Feet
 - 2-4 Bargain and Sale Deed, Karen Hasenoehrl, Trustee of the Krieg Family Trust, May 7, 2009
 - 2-5 List of Property Owners within 1,000-feet
 - 2-6 Preliminary Stormwater Proposal
 - 2-7 Preliminary Traffic & Concurrency Information
 - 2-8 Revocable Encroachment Permit Application
 - 2-9 Determination of Completeness – VAR2017-0004, dated August 11, 2017
 - 2-10 PDS Comment Form Letter Notice of Application, VAR2017-0004, with list of property owners' addresses
 - 2-11 Current Planning/Shorelines Hearing Examiner Checklist, September 28, 2017

- 3 Staff Report, dated June 21, 2018

- 4 Agency Comments:
 - * Shoreline Conditional Use Notice of Additional Requirements, October 24, 2017
 - * Environmental Health, October 30, 2017
 - * Lummi Nation Tribal Historic Preservation Office, November 2, 2017
 - * Engineering Technician, March 22, 2018
 - * Fire Marshal, April 16, 2018

- 5 Stormwater Management Report, prepared by Pacific Surveying and Engineering Services, Inc., dated April 25, 2018, stamped Stormwater Management Plan Approved, May 4, 2018

- 6 Tree Inventory and Addition & Site Improvements, Site Plan, prepared by Mark E. Christ, Architect, July 12, 2017, stamped Natural Resources Approved, May 4, 2018
- 7 Large Stormwater Site Improvements Revised Plan, stamped Shoreline Approved, May 11, 2018 and stamped Approved Stormwater Management Plan, May 4, 2018
- 8 Certificate of Mailing, Notice of Application, October 27, 2017, with attached Property Owner Addresses
- 9 Legal Notice of Application for SHC 2017-0008, October 27, 2017
- 10 Bellingham Herald Tear-Sheet Legal Notice of Application, VAR2017-0004, May 17, 2018
- 11 Certificate of Mailing, Notice of Public Hearing, June 7, 2018
- 12 Posting Certificate, Notice of Public Hearing, June 14, 2018
- 13 Affidavit of Publication Notice of Public Hearing, June 14, 2018
- 14 Tree Inventory, Existing Conditions Map, dated April 24, 2017, Larry Steele & Associates, Land Surveyors
- 15 Floor Plan, Schematic Design, July 12, 2017, Mark E. Christ, Architect, stamped Shoreline Approved, May 11, 2018
- 16 Site Plan, Schematic Design, July 12, 2017, Mark E. Christ, Architect, stamped Shoreline Approved, May 11, 2018
- 17 Site Plan, Schematic Design, Mark E. Christ, Architect, stamped Natural Resources Watershed approved, May 4, 2018
- 18 Engineering Technician Comments, June 12, 2018
- 19 Certificate of Mailing, Notice of Application, May 31, 2018

II.

The Applicant is seeking a Shoreline Conditional Use Permit and Zoning Variance to construct an attached garage to an existing single-family residence that is nonconforming with respect to the Habitat Conservation Area buffer. The Zoning Variance is proposed to expand within the prescribed road setback to create an off-street parking area adjacent to the right-of-way.

III.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Shoreline Conditional Use Permit and Zoning Variance Permit in the Staff Report, Exhibit 3, dated June 21, 2018, subject to conditions. The Findings of Fact and Conclusions of Law set forth in the Staff Report, Exhibit No. 3, a copy of which is attached hereto, are incorporated herein by this reference. The Applicant has indicated that there are no factual inaccuracies in Staff's factual findings.

The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this proposal at the public hearing.

The Findings of Fact in the Staff Report are hereby adopted by the Hearing Examiner as the Findings of Fact herein.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The request to expand an existing single-family residence with the construction of a new attached garage, with prescribed road setback to create off-street parking area adjacent to ROW can be granted only if the request is consistent with the Zoning Variance Criteria of WCC 20.84.120 (1 through 3). Subject to Conditions of Approval, this Zoning Variance will be consistent with the applicable Variance Criteria and with the County's Shoreline Management Program (SMP), Code Criteria of WCC23.50.070(J) & (K), and subject to Conditions of Approval, this Shoreline Conditional Use Permit will be consistent with the applicable requirements of WCC 23.60.040.B. The requested Variance and Conditional Use Permit should be granted subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Shoreline Conditional Use Permit and Zoning Variance Permit are hereby granted to Karen Lindahl for Krieg Family Trust to expand an existing single-family residence with a new attached garage with off-street parking area adjacent to ROW, APN 380336 434196, addressed as 2588 Lake Whatcom Boulevard, Bellingham, Washington, subject to the following conditions:

1. The proposed work shall be consistent with the scope of the application materials provided reviewed by staff and consistent with the site plans stamped "Shoreline Approved" on May 11, 2018. Any changes will require additional review by the Whatcom County Shoreline Administrator and/or the Whatcom County Hearing Examiner.
2. Issuance of this shoreline permit does not release the applicant from any other local, State, regional or Federal statutes or regulations applicable to the proposed development.
3. Except as authorized by this decision, the proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program and the Whatcom County Zoning Code.
4. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.
5. A Declaration of Covenant and Grant of Easement Document is required at the time of building permit submittal. The form can be found on the Whatcom County website at: <http://www.whatcomcounty.us/DocumentCenter/View/25319/Declaration-of-Covenant-and-Grant-of-Easement-On-site-Stormwater>
6. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to any work on the subject property. The above required building permit shall be reviewed by the Shoreline Administrator to ensure consistency with the conditions of this exemption approval prior to issuance of said permit. This is required to move the house onto this lot.
7. All development shall comply with the Whatcom County Development Standards.

8. Applicant shall apply for a revocable encroachment permit.
9. All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.
10. The project shall not result in significant degradation of ground or surface waters.
11. Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.
12. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
13. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of

the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES
FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 27th day of June 2018.



Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

EXHIBIT

Date: June 21, 2018

Hearing Date: June 27, 2018

#3

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of
Krieg Family Trust
Shoreline Conditional Use Permit &
Zoning Variance Permit

FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS for
SHC2017-00008 & VAR2017-
00004

SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant requests approval of a Shoreline Conditional Use Permit for the construction of a garage attached to an existing single family residence that is nonconforming with respect to Habitat Conservation Area buffer. Additionally, the applicant is seeking approval of a Zoning Variance to expand within the prescribed road setback and to create an off-street parking area adjacent to the right-of-way.

Recommendation: Pursuant to Chapter 90.58 RCW, staff recommends approval of the subject Shoreline Conditional Use Permit and Zoning Variance, subject to conditions of approval outlined within this permit.

PRELIMINARY INFORMATION

Applicant: Krieg Family Trust
c/o Karen Hasenoehrl Lindahl, Trustee
21639 Prairie Road
Sedro-Woolley, WA 98284

Property Location: 2588 Lake Whatcom Blvd.

Legal Description: Within Section 36, Township 38N, Range 03E, W.M.
Assessor's Parcel Number: 380336434196

Adjacent Water Body: Lake Whatcom

Shoreline Designation: Shoreline Residential

Statewide Significance: No

Zoning: Residential Rural

SEPA Review: Categorically Exempt pursuant to WAC 197-11-800

Authorizing Ordinances:

WCC 23.50	Applicability
WCC 23.70.010	Administrator
WCC 20.32	Residential Rural
WCC 20.84	Variances

Applicable Shoreline Provisions:

WCC 23.10	Governing Principles
WCC 23.20	Goals and Objectives
WCC 23.30.060	Shoreline Residential Area
WCC 23.50.070	Nonconforming Development
WCC 23.60	Shoreline Permits and Exemptions
WCC 23.60.040	Conditional Use Permit Criteria
WCC 23.60.100	Consolidated Permit Review
WCC 23.60.130	Public Hearings
WCC 23.90	General Policies and Regulations
WCC 23.90.130	Shoreline Bulk Provisions
WCC 23.100.110	Residential
WCC 23.110	Definitions

INTRODUCTION

The applicant requests a Shoreline Conditional Use Permit and Zoning Variance to expand an existing single-family residence on a non-conforming parcel. Specifically, the proposal is to add living space on the landward side of the residence and install a parking area on the landward side of the residence. The proposed living space expansion is approximately 360 square feet in size and the parking area is 250 square feet in size. The expansion is proposed to the South of the existing single-family residence, away from the shoreline. Lastly, the applicants are proposing to reorient an existing staircase and landing on the waterward side of the house so that it runs parallel to the outside wall of the house.

PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application for the Variance: Pursuant to WCC 20.84.235(2), Notices were mailed on May 31, 2018 to property owners whose boundaries lie within 1,000 feet of the subject property.

Notice of Application for the Shoreline Conditional Use: Pursuant to WCC 23.60.080, notices were mailed on October 27, 2018 to property owners whose boundaries lie within 1,000 feet of the subject property. Additionally, the project was noticed in the Bellingham Herald on the same day.

Public Comment: No Comments were received during the comment period.

Notice of Public Hearing for the Variance: The Notice of Public Hearing for the Variance was published one-time in the Bellingham Herald on May 17, 2018.

STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from the SEPA threshold review.

The subject application is categorically exempt the SEPA threshold review.

FINDINGS & CONCLUSIONS

WCC 23.60.100.B states that the provisions of Chapter 2.33 shall apply to the consolidated application, review, and approval of applications requiring an open record hearing. The proposed project requires review of a zoning variance and shoreline conditional use permit. The zoning variance requires an open record hearing, and under consolidated review the shoreline conditional use application shall also be considered under this review. This requires the decision maker for the open record hearing to be the decision maker for the consolidated review of the zoning variance and shoreline conditional use permit.

Residential uses are generally allowed under Whatcom County's Shoreline Management Program (SMP), under Whatcom County Code (WCC) 23.100.110. Residential development within the Shoreline Residential designation is permitted and subject to policies and regulations of the SMP. Pursuant to WCC 23.90.130.C, the required shoreline setback is established by Whatcom County Code 16.16. Pursuant to WCC 16.16.740, the required Habitat Conservation Area (HCA) buffer is 150 ft. from the Ordinary High Water Mark (OHWM). Additionally, WCC 16.16.265.D provides that buildings must be set back 10 ft. from any required buffer. Staff has determined that the subject parcel is non-conforming as defined by WCC 23.50.070.M.

Pursuant to WCC 23.60.130 the Shoreline Conditional Use application requires a hearing because it also requires a Zoning Variance. As a non-conforming parcel, development of the site is constrained per the requirements of WCC 23.50.070(K). The code criteria for WCC 23.50.070.J & K are provided below:

- J. The enlargement or expansion of single-family residences by the addition of space to the exterior of the main structure or normal appurtenances is permitted without a conditional use permit or variance once during the life of the structure (100 years). The structure shall be located landward of the ordinary high water mark, and any expansion of the footprint is landward of the existing building footprint (not the side yard), and any vertical expansion is within the existing building footprint; provided, that the following conditions are met:
 - 1. Enlargements, expansions, or additions that increase the existing primary structure or normal appurtenances by up to 250 square feet of gross floor area as defined by Chapter 23.110 WCC shall be allowed provided the expansion or addition will occur on a previously impacted impervious surface and the expansion is not waterward of the common-line setback as illustrated in Appendix F.
 - 2. Enlargements, expansions, or additions that increase the total footprint of the existing primary structure or normal appurtenances by 250 to 500 square feet of gross floor area as defined by Chapter 23.110 WCC shall be allowed; provided, that the addition will occur on a previously impacted impervious surface and the expansion is not waterward of the common-line setback as illustrated in Appendix F; further provided, that the shoreline is enhanced by the equivalent area of a building footprint that is expanded. If enhanced through planting,

the administrator shall require a vegetation management plan consistent with WCC 23.90.060(B)(2).

- K. The administrator shall require a conditional use permit if the enlargement or expansion of single-family residences by the addition of space to the exterior of the main structure or normal appurtenances is in excess of those allowances provided in subsection J of this section.

The proposed project meets the criteria of WCC 23.50.070.K and therefore qualifies for review via a shoreline conditional use permit.

In addition, WCC 23.60.040.B states that uses specifically classified or set forth in the SMP as conditional uses may be authorized, provided the applicant/proponent can demonstrate all of the following:

1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.
2. That the proposed use will not interfere with normal public use of public shorelines.
3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
5. That the public interest suffers no substantial detrimental effect.

In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

The subject property consists of one lot that is approximately 5,700 sq. ft. in size and is located adjacent to Lake Whatcom in Bellingham, Washington. The parcel slopes down from Lake Whatcom Blvd. to the shore of Lake Whatcom, where there is an existing concrete bulkhead and dock. The existing home has a foundation footprint of approximately 1,790 sq. ft. The area between the home and shore is predominately lawn and there is an existing hedgerow of cedars along the western property line.

The applicants are proposing a footprint expansion of approximately 360 sq. ft. to increase the living area of the existing house. Additionally, the applicants are proposing a new 620 sq. ft. off-street parking area (248 sq. ft. of which is on the subject property, the rest is within the County right-of-way) adjacent to Lake Whatcom Blvd. in order to improve ingress/egress safety along the relatively busy road. Lastly, the applicants are proposing to modify an existing staircase on the north side of the house by reorienting it so that it no longer extends waterward of the existing foundation.

Single-family residences are listed as a preferred use in RCW 90.58.020. The subject site is located on privately owned property, and the proposed project will not interfere with normal public use of public shorelines. Surrounding properties that are located within the same residential area as the subject property are developed with single-family residences and normal appurtenances of similar size and scale as the proposed residence. The

proposed expansion will not result in any new disturbance to the HCA buffer, and will be no further water ward. The project as proposed will not result in unreasonable adverse effects to the shoreline environment. It does not appear the public interest will suffer any substantial detrimental effect as a result of the approval of this project. The proposed development, as conditioned, will not cause adverse effects to the shoreline environment in both the short- and long-term.

The subject parcel is within the Phase II Area of the Lake Whatcom watershed. A stormwater design plan proposing full infiltration was prepared by Jeff Vander Yacht of Pacific Surveying & Engineering and the plan was approved by Whatcom County stormwater staff on May 4, 2018.

The project was reviewed by critical areas staff, and it has been determined that the project does not require mitigation. The trees to be removed along Lake Whatcom Blvd. have been deemed to be functionally and effectively disconnected from the Lake Whatcom shoreline environment. The removal of the trees will increase visibility along this section of Lake Whatcom Blvd., where there is a relatively narrow shoulder.

Pursuant to WCC 23.60.010.C the project was reviewed for consideration of potential cumulative effects that would result if similar developments were permitted in the area of the subject property. The proposed expansion is minimal, at 360 sq. ft. and no additional buffer impacts are anticipated. Mitigation is not required for the project. Therefore, the project will not result in a net loss of ecological functions and values. No detrimental impacts were identified to the shoreline environment during the course of this permit review. The proposal was reviewed for lot coverage compliance with the Whatcom County Zoning Ordinance and determined to be in compliance. The proposal as conditioned appears to comply with the density standards, development standards, bulk and dimensional setbacks, and critical area requirements. As such, additional approvals for additional developments where similar circumstances exist are not likely to represent a cumulative environmental impact to the shoreline. It has also been determined that no use conflicts or view issues will result from the proposed expansion. It is the opinion of staff that this project as proposed and conditioned meets the ecological protection policies of the Whatcom County SMP resulting in no net loss of ecological functions and process and that the sum of similar permitted actions appears to comply with the policy of RCW 90.58.020.

This project has been determined to be outside of all flood hazard areas and was therefore not reviewed for compliance with the Whatcom County Flood Damage Prevention Code (Title 17) and the associated requirements of the Endangered Species Act (ESA).

Zoning Variance - Applicable Policies and Regulations

In order for a variance to be approved it must satisfy the criteria of WCC 20.84.120 1 through 3. In summary, these criteria state that any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone, but be granted because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, and when the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zoning classification. Aesthetic considerations or design preferences

without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section, and the granting of this variance shall not be materially detrimental to the public welfare, or injurious to the property or improvement in the vicinity and zone in which the subject is situated.

The following circumstances, pursuant to WCC 20.84.120 (1)-(3), shall be found to apply in order to grant a variance:

- 1. That any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone.***

Staff has no reason to believe that this variance has been requested for financial reasons or a hardship caused by actions of previous owners. The applicant has proposed to add 360 square feet of living space and 250 square feet of new parking area. Due to the limiting size of the lot, location of the existing residence and application of setback requirements within the SMP the applicant is requesting the variance.

Staff also believes that this is not a grant of special privilege. During the conducted site inspection, staff was able to note that several single-family residences and accessory structures along Lake Whatcom Blvd have been erected within the 20 foot road side setback. Since 2003, two other similar variance requests have been granted by the Hearing Examiner within the area for homes of similar size and scale.

- 2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zone classification. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section.***

Outside of the ordinary high water mark of the shoreline, the subject parcel contains an area of approximately 5,700 square feet. The lot size is well below the minimum lot size of the Rural Residential zone. The applicant's lot size is similar in size to other lots in this reach of Lake Whatcom. Because of the setbacks imposed by the SMP and Zoning Ordinance, the development of this and other surrounding lots is more difficult than in other commonly zoned parcels in the county. Since 2004, two similar variance requests within the area have been granted by the Hearing Examiner. Similar to the hardships substantiated in those case, this proposed development is also located on a substandard lot, contains existing development that does not conform to the current setbacks and further is subject to the provisions of the SMP.

- 3. The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject is situated.***

The granting of the variance will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity. During the public comment period, staff received no adverse public comments.

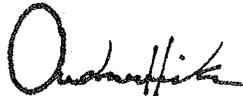
Note that according to Washington Administrative Code (WAC) 173-27-200, approval of this Shoreline Conditional Use permit by Whatcom County has been sent to the Washington State Department of Ecology (DOE) for substantive review and approval. DOE shall render and transmit to local government and the applicant its final decision within thirty (30) days of the date of submittal by Whatcom County pursuant to WAC 173-27-130.

PUBLIC COMMENTS

No Comments were received during the comment period.

Official: Sam McDaniel
Title: Current Use Planner

Official: Andrew Hicks
Title: Shoreline Program Administrator



Dated: June 21, 2018

Dated: June 21, 2018

CONDITIONS ASSOCIATED WITH SHC2017-00008 & VAR2017-00004

1. The proposed work shall be consistent with the scope of the application materials provided reviewed by staff and consistent with the site plans stamped "Shoreline Approved" on May 11, 2018. Any changes will require additional review by the Whatcom County Shoreline Administrator and/or the Whatcom County Hearing Examiner.
2. Issuance of this shoreline permit does not release the applicant from any other local, State, regional or Federal statutes or regulations applicable to the proposed development.
3. Except as authorized by this decision, the proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program and the Whatcom County Zoning Code.
4. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.
5. A Declaration of Covenant and Grant of Easement Document is required at the time of building permit submittal. The form can be found on the Whatcom County website at: <http://www.whatcomcounty.us/DocumentCenter/View/25319/Declaration-of-Covenant-and-Grant-of-Easement-On-site-Stormwater>
6. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to any work on the subject property. The above required building permit shall be reviewed by the Shoreline Administrator to ensure consistency with the conditions of this exemption approval prior to issuance of said permit. This is required to move the house onto this lot.
7. All development shall comply with the Whatcom County Development Standards (WCDS).

8. Applicant shall apply for a revocable encroachment permit.
9. All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.
10. The project shall not result in significant degradation of ground or surface waters.
11. Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.
12. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
13. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.