

WHATCOM COUNTY HEARING EXAMINER

re: The application of **Douglas & Cathy Angell** for a Zoning Variance Permit

VAR2020-00006

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The applicant is requesting a Zoning Variance to reduce the front yard property line setback on a 6,583 SF lot when rebuilding the existing residence resulting in the addition of a full second floor. Specifically, the applicant is requesting to reduce the required front yard setback from 20 feet to approx. 3 feet (3' – 2.5'), on a property addressed as 3921 Blue Canyon Road, Sedro Woolley, WA.

Decision: The requested Zoning Variance Permit is approved, subject to conditions.

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.

FINDINGS OF FACT

I.

Applicant: Douglas & Cathy Angell
13725 209th Ave. NE
Woodinville, WA 98077

Site Address: 3921 Blue Canyon Road
Sedro Woolley, WA

Agent: Jack Bloss
AVT Consulting LLC
1708 F Street
Bellingham, WA 98225

Assessor's Parcel Number: 370422 323345

Legal Description: VAC BLUE CANYON CITY LOT 1 BLK 16-TOG WI VAC SWLY

Zoning: Rural (R5A)

Comprehensive Plan: Rural

Subarea: Lake Whatcom Watershed

Lot Size: 6,483 Square Feet

Roads: Public

Water & Sewer Supply: Surface Water withdrawal from Lake Whatcom & On-Site Sewage System

Fire Protection: Whatcom County Fire District #18

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Mount Baker School District # 507

Topography: The entire site is sloping toward the west towards Lake Whatcom

Vegetation: The subject site is vegetated with trees and shrubbery

Adjacent Land Uses:

North:	R5A – Residential
East:	RF – Rural Forestry
South:	R5A – Residential
West:	Lake

Authorizing Codes, Policies, Plans, And Programs:

1. Revised Code of Washington (RCW) Chapter 36.70
2. Revised Code of Washington (RCW) Chapter 58.17
3. Whatcom County Comprehensive Plan
4. Whatcom County Code, Title 14, Use of Natural Resources
5. Whatcom County Code Chapter 12.08, Development Standards
6. Whatcom County Code Chapter 15, Building Code/Fire Code
7. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
8. Whatcom County Code Chapter 16.16, Critical Areas
9. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
10. Whatcom County Code Title 23, Shoreline Management Program
11. Whatcom County Code Title 22, Land Use and Development Procedures
12. Whatcom County Code Title 24, Health Regulations

Legal Notices: Mailed – Notice of Public Hearing, June 29, 2021
Posted – Notice of Public Hearing, July 7, 2021
Published – Notice of Public Hearing, July 7, 2021
Online Publication of Agenda and Zoom links – July 7, 2021

Hearing Date: July 21, 2021

Parties of Record:

Craig Ostrom – Current Planning
WC Planning and Development Services
5280 Northwest Drive
Bellingham, WA 98226

Jack Bloss
AVT Consulting
1708 F Street
Bellingham, WA 98225

Ali Taysi
AVT Consulting
1708 F Street
Bellingham, WA 98225

Hearing Examiner Exhibit List:

01. var2020-00006-Variance Application
02. var2020-00006-Narrative
03. var2020-00006-Original-Site Plan
04. var2020-00006-Revised-site-plans
05. var2020-00006-Floor-Plans-and-Elevations
06. var2020-00006-Shoreline Exemption App
07. var2020-00006-Statutory Warranty Deed
08. var2020-00006-Prelim-Traffic-and-Concurrency-Form
09. var2020-00006-ROSS 2014
10. var2020-00006-Certificate of Water Right
11. var2020-00006-Revocable Encroachment Permit Application
12. var2020-00006-Critical Areas Report
13. var2020-00006-Aerial-assessor-map-and-info

14. var2020-00006-det-completeness
15. var2020-00006 Notice of Application
16. var2020-00006-Mailing List-Labels-Cert-of-Mailing
17. var2020-00006-legal-notice-no-sepa
18. var2020-00006-combined-distribution-list
19. var2020-00006-Published Legal Notice
20. Vicinity-Map-VAR2020-00006-SHX2020-00042
21. var2020-00006-NOAR-and-memos
22. var2020-00006-Transmittal Memorandum
23. var2020-00006- NOAR Response
24. var2020-00006-Draft Agreement to Remove Structures
25. var2020-00006-Alluvial Fan Hazard Report
26. var2020-00006-Commissioners Proceedings-Railroad Ave Vacation
27. var2020-00006-Flood Hazard Zone Development Review Form
28. var2020-00006-Original Building Permit-1984
29. var2020-00006-Parks-and- Rec Letter Permitting Access
30. var2020-00006-Revised-Site-Plans
31. var2020-00006-Revised-Narrative
32. var2020-00006-Trailer Slab Building Permit-1980
33. var2020-00006-Revised-Variance Application-
34. var2020-00006-Revised-Shoreline Exemption Application
35. var2020-00006-Second-NOAR-and-memos
36. var2020-00006-Second-NOAR-Transmittal Memorandum
37. var2020-00006-Tree Canopy Retention Plan
38. var2020-00006-Final-Revised-Site-Plans
39. ROS-afno1985-1504103
40. ROS-afno1992-618086
41. WC-knapp easement-afno940505167
42. ROS-afno2001-500335
43. ROS-BlueCanyonSurveyPW-afno2018-302805
44. Whatcom county prosecuting attorney remove shed page 1 march 2021
45. var2020-00006-septic-permit-1984
46. var2020-00006-staff-report-and-memos

- 47. var2020-00006-HE-exhibit-list-20210713
- 48. Certificate of Mailing
- 49. Legal Notice Payment
- 50. Certificate of Posting

II.

The applicant, Jack Bloss, on behalf of the property owners Douglas & Cathy Angell, is requesting a zoning variance to reduce the front yard setback from 20 feet to the current 3'-2.5" foot setback to accommodate for reconstruction of an existing home.

III.

The Whatcom County Technical Review Committee has recommended approval of the requested Zoning Variance. The Applicant has indicated there are no factual inaccuracies in Staffs findings and no objection to the Conditions of Approval requested by Staff.

IV.

WCC 2.11.220 allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness to appear in person and be cross examined. There was no public comment at the Hearing.

V.

BRWCHE §2.4 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection was made any of the 50 exhibits that were admitted into the record.

VI.

The Findings of Fact of Whatcom County Planning and Development Services, as set forth in the Staff Report, dated July 12, 2021, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

VII.

Any Conclusion of Law below 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.

As indicated in the factual findings the subject property is limited in size and encumbered by a shoreline setback and habitat conservation area. In order to rebuild the existing structure and add an additional floor a zoning variance is required. Staff has concluded that the requested variance is consistent with the Variance criteria in WCC 22.05.024(4) (a) through (c). The Hearing Examiner concurs in this conclusion and should grant the requested Variance subject to the conditions recommended by Staff.

II.

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

DECISION

A Zoning Variance Permit is hereby granted to Douglas & Cathy Angell to a reduce the front setback on a 6,483 SF Lot. Assessor's Parcel No.370422-323345, addressed as, 3921 Blue Canyon Road, Sedro Woolley, Washington, subject to the following conditions:

1. *Permit Changes or Modifications: The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.*
2. *Inadvertent Discovery: If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (778-5900) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff*

- (911) and Lummi Sche'lan"en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
3. Drainage: All development must comply with the drainage standards found in WCC 20.36.656. Stormwater from the proposed development shall be controlled in a manner which does not degrade any critical areas or surface waters, or direct water onto neighboring properties.
 4. Right to Farm: Pursuant to WCC, Title 14, the owners of the property upon which this variance is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on the building permit issued by Whatcom County Planning & Development Services.
 5. Septic: The property appears to be served by a permitted on-site sewage system. The applicant will need to hire a licensed OSS designer to determine the extent of the easement needed for the OSS and reserve area prior to building permit application.
 6. Septic: A formal legal agreement for the easement will be required prior to building permit application.
 7. Water: A satisfactory bacteriological water sample after treatment will be required at the time of final occupancy.
 8. Building Permit: A building permit will be required for this project for previously constructed buildings without permits.
 9. The applicant shall demonstrate that all unpermitted structures have been removed prior to final approval of any building permit as detailed on sheet C3 of the Final Revise Site Plans dated June 15, 2021.
 10. Prescreening: Submittal of a building permit application requires a prescreening of the project and a prescheduled application appointment. Refer to the Residential Structures and Detached Accessory Structures - Permit Application Packet for additional information and a description of the submittal documents required to apply for a building permit. The packet is available in our office or on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.
 11. Parking Stalls: Parking appears to be existing. The applicant shall demonstrate at the time of building permit, that the property has legal existing parking spaces.
 12. The associated shoreline exemption permit (shx2020-00042) shall be conditioned to incorporate all geologic hazard mitigation measures recommended Geotest Services, and Notice on Title for Regulated Critical Areas will also be required.

13. *Any change in the footprint, including but not limited to, addition of laydown or construction areas, installation of new utilities, or any removal of vegetation shall be reviewed for impacts to critical areas or their buffers prior to the issuance of any development permits.*
14. *The building permit shall be routed to Critical areas staff and may be conditioned for a pre-development meeting with the hired contractor to ensure that impacts to critical areas do not occur.*
15. *If, at any time during construction, more than 1,500 sq. ft. of hard surface is replaced (demolished down to the foundation), or more than 500 sq. ft. of impervious is created, a stormwater design showing compliance with WCC 20.51.420 will be required.*
16. *Activities which expose more than 500 sq. ft. of soil are prohibited from October 1 through May 31.*
17. *The proposed work shall be consistent with the scope of the application materials reviewed by staff and consistent with the site plans stamped "Site Plan Review Approval" and initialed by the Shoreline Administrator on July 6, 2021, except as conditioned below. Any changes will require additional review by the Whatcom County Shoreline Administrator.*
18. *Prior to final occupancy, the unpermitted shed and concrete pad located on the north portion of the subject property shall be wholly removed from the property.*
19. *Prior to final occupancy, the unpermitted bunk house and concrete pad located on the adjacent property to the east shall be wholly removed from the property.*
20. *The height of the replacement residence shall not exceed 30', as measured from average natural grade to the apex of the roof.*
21. *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.*
22. *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.*
23. *In conformance with WCC 16.16.265, prior to issuance of the building permit, the applicant shall file a Notice on Title with the Auditor's Office. The notice shall be filed on forms provided by the County and a copy shall be provided to the shoreline administrator. This document is available online at: <http://whatcomcounty.us/DocumentCenter/Home/View/2205>*

24. *All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.*
25. *Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.*
26. *Washington State Department of Ecology Water Quality Standards shall be maintained.*
27. *No more than 500 sq. ft. of soil in total shall be exposed from October 1 through May 31.*
28. *The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.*
29. *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.*
30. *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.*
31. *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.

32. *Project Expiration: Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code, or is established by a court decision or state law, or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.*

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may cause for its revocation.

Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of these conditions shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

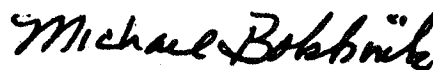
NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The Applicant, any party of record, or any County Department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 27th day of July 2021.



Michael Bobbink, Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

Date: July 12, 2021

The application by Douglas & Cathy Angell for a Zoning Variance	VAR2020-00006 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary:

Variance: The applicant is requesting a zoning variance to reduce the front yard property line setback on a 6,483 square foot lot when rebuilding the existing residence. The proposed project includes the redevelopment and expansion of the existing single-family residence within the current building footprint. The expansion would result in the addition of a full second floor to the existing residence. No portion of the expansion will occur outside the existing footprint. Specifically, the applicant is requesting to reduce the required front yard property line setback for both floors from 20 feet to approximately three feet (3'-2.5") as originally permitted.

Recommendation: The Technical Review Committee recommends approval based on the following report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Owner/Applicant: Douglas & Cathy Angell
13725 209th Ave NE
Woodinville, WA 98077

Authorized Agent: Jack Bloss
AVT Consulting LLC
1708 F Street
Bellingham, WA 98225

Site Location/Address: 3921 Blue Canyon Rd, Sedro Woolley, WA

Legal Description: VAC BLUE CANYON CITY LOT 1 BLK 16-TOG WI VAC SWLY

Assessor's Parcel Number: 370422 323345

Zoning: Rural (R5A)

Comprehensive Plan: Rural

Subarea: Lake Whatcom Watershed

Lot Size: 6,483 Square Feet

Roads: Public

Water & Sewer Supply: Surface Water withdrawal from Lake Whatcom & On-Site Sewage System

Fire Protection: Whatcom County Fire District #18

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Mount Baker School District # 507

Topography: The entire site is sloping toward the west towards Lake Whatcom.

Vegetation: The subject site is vegetated with trees and shrubbery.

Adjacent Land Uses:

North:	R5A – Residential
East:	RF – Rural Forestry
South:	R5A – Residential
West:	Lake

B. AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

1. Revised Code of Washington (RCW) Chapter 36.70
2. Revised Code of Washington (RCW) Chapter 58.17
3. Whatcom County Comprehensive Plan
4. Whatcom County Code, Title 14, Use of Natural Resources
5. Whatcom County Code Chapter 12.08, Development Standards
6. Whatcom County Code Chapter 15, Building Code/Fire Code
7. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
8. Whatcom County Code Chapter 16.16, Critical Areas
9. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
10. Whatcom County Code Title 23, Shoreline Management Program

11. Whatcom County Code Title 22, Land Use and Development Procedures
12. Whatcom County Code Title 24, Health Regulations

III. APPLICATION PROPOSAL

The applicant, Jack Bloss, on behalf of the property owners Douglas & Cathy Angell, is requesting a zoning variance to reduce the front yard setback from 20 feet to the current 3'-2.5" foot setback to accommodate reconstruction of an existing 323 square foot home including a new second floor. The site gains access across a vacated road right-of-way (*Railroad Avenue, Plat of Blue Canyon City*) now in the ownership of Whatcom County Parks. The applicant originally proposed a parking stall on-site but has revised their proposal due to the complications that would arise through code constraints. All proposed re-development is located on the subject parcel. Existing unpermitted development including the bunk house and shed(s) will be removed from the Parks property. The applicant is requesting a zoning setback variance due to the limited size of the subject lot as originally permitted as well as Habitat Conservation Area constraints.

The applicant proposes to maintain their existing use for ingress, egress, and parking through the Whatcom County Parks property, APN 370422200435, with no changes other than removal of existing unpermitted structures.

After review of the original permit (SHX2020-00042), staff determined that a zoning variance is required for the additional structure within the setback area.

IV. SITE DESCRIPTION

The subject lot is approximately 6,483 square feet not including any intended portion of the Parks property utilized for ingress, egress, and parking. The site is located at 3921 Blue Canyon Rd, Sedro Woolley, WA, Section 22, Township 37 North, Range 04 East W.M., Whatcom County, WA. Blue Canyon Road is a Whatcom County maintained road. The surrounding properties are zoned Residential Rural (R5A) with Rural Forestry to the east and Lake Whatcom to the west.

The site is currently developed with a home and deck. Unpermitted structures exist onsite and adjacent which include the bunkhouse, various sheds, stairs, outdoor shower, and washer/dryer shed as described on page "C2" of the Final Revised Site Plans dated June 15, 2021. All are proposed to be removed through the building permit process. The original building permit which established the existing current setbacks was reviewed, approved and received final approval under BLD84-05782 (Exhibit # 28).

An onsite sanitary sewer system was permitted on the Whatcom County Parks property under No 011739 which indicates that a final as-built was approved.

V. VARIANCE PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter WCC 22.05.070.

Notice of Application: The Notice of Application for this proposal was published on September 11, 2020 in the Bellingham Herald and on the County website. The fourteen (14) day comment period ended on September 25, 2020. A notice of application was sent to 30 owners of property within 1,000 feet on September 11, 2020. The site was posted on September 11, 2020 pursuant to WCC 22.05.080.

Agency Comment: During the public comment period for the Notice of Application, Whatcom County Planning & Development Services Department received no public comment and one Agency comment from Whatcom County Parks. A summary of the concern and a brief response to the concern is listed below:

Comment 1: Michael McFarlane, Director of Whatcom County Parks sent a formal letter to the Angells indicating that several structures located on the Whatcom County Parks property will have to be removed (see exhibit #44)

Response: *The agent has submitted a draft agreement to remove all infrastructure located on the WC Parks property and have been in correspondence with WC Parks directly about timing for removal. The subject structures have been labeled as being removed on page "C3" of the Final Revised Site Plans dated 6/15/2021/*

VI. 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 SEPA threshold review.

Pursuant to WCC 16.08 and WAC 197-11-800 (6)(b), minor land use decisions such as the granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location and/or surrounding are categorically exempt.

This variance is exempt from review under the State Environmental Policy Act pursuant to WAC 197-11-800.

VII. CONSISTENCY WITH REGULATIONS, FINDINGS OF FACT

A. Zoning Variance WCC 22.05 - Applicable Policies and Regulations

In order for a variance to be approved it must satisfy the criteria of WCC 22.05.024(4) (a) through (c). 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 22.05.024(4) (a) through (c) shall be found to apply in order to grant a variance:

- a. 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 is based upon reasons of hardship caused by previous actions or is for pecuniary reasons. The existing home was reviewed and approved by Whatcom County under BLD84-05782 and setbacks were signed by Whatcom County staff as approved on said building permit.

The subject lot is limited in size at 6,483 square feet and is further constrained due shorelines of the state, habitat conservation areas, and stormwater control. This poses constraints for any development on the parcel while complying with Whatcom County's development standards. In order to rebuild the existing structure and add an additional floor within the 20' setback area, a zoning variance is required. Similar setback variances have been granted to other single family dwelling units located under less constrained circumstances and would not constitute a special privilege.

- b. 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.**

As the 6,483 square foot lot is developed and is further constrained due shorelines of the state, habitat conservation areas, geo-hazard areas, and stormwater control, the house is located in the least impactful site in regard to critical area protection and shoreline management controls. Based on feedback from County staff, the applicant is only proposing to increase the size of the existing structure vertically while maintaining the same footprint located within

the shoreline HCA. As the home is existing within the 20' setback and no decrease in setbacks is proposed, it would constitute a hardship to apply the required 20' setback to the second story rendering the project impossible as the structure is currently only 24 feet deep in that direction.

As such and with the above circumstances considered, staff believes that the strict application of the zoning ordinance would deprive the subject property owner of an improvement that is otherwise allowed on other lots.

c. 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 as the home is existing and therefore does not affect the public welfare nor is injurious to the property.

The Technical Review Committee finds that the requested variance meets the three requirements of WCC 22.05.024(4) (a) through (c).

B. WCC Chapter 12.08 – Roads and Bridges

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

The Whatcom County Public Works Department Division of Engineering reviewed the proposal and submitted a memo dated September 7, 2020 recommending approval with no conditions.

The Technical Review Committee has determined that as conditioned, the proposed variance meets the requirements of WCC Chapter 12.08.

C. WCC 15 – Buildings & Construction

Building Code: WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

Building Services reviewed the requested Variance and have no comments or conditions other than a building permit will be required.

Fire Code: The Whatcom County Fire Marshal submitted a memo dated September 17, 2020 indicating WCFMO has no conditions, concerns, or comments on this project at this time.

See Section IX of this document.

The Technical Review Committee has determined that as conditioned, the variance would meet the requirements of WCC Title 15.

D. WCC Title 16 – Whatcom County Critical Areas Ordinance

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County’s critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

Wetland and HCA

At this time, Wetland and HCA have no concerns that the current proposal as shown on the VAR2020-00006 final revised site plan will not have impacts to wetlands or habitat conservation areas. Therefore, staff recommends approval of this variance with performance conditions.

Geologically Hazardous Areas

The proposed variance is located in an alluvial fan hazard area and is therefore subject to the requirements of Article 3 of the Whatcom County Critical Areas Ordinance. Hazards have been assessed by a qualified professional and mitigating recommendations presented in a professional report titled ‘Geologically Hazardous Areas Report – Angell Residence’ prepared by Geotest Services, Inc., dated December 28, 2020. The report concludes that the proposed improvements are located in the least hazardous location at the subject parcel, and that structural improvements are sufficient to mitigate interpreted hazards. The associated shoreline exemption permit (shx2020-00042) will be conditioned to incorporate all geologic hazard mitigation measures recommended Geotest Services, and Notice on Title for Regulated Critical Areas will also be required. As a result, the proposed variance may be approved in consideration of Article 3 of the Whatcom County Critical Areas Ordinance.

See Section IX of this document.

The Technical Review Committee has determined that the proposed variance will meet the requirements of WCC Chapter 16.16.

E. WCC Title 20 – Official Whatcom County Zoning Ordinance

The subject property is located in the Rural (R2A) zoning district (WCC 20.36).

WCC 20.36.350 – Building Setback Criteria:

Building setbacks shall be administered pursuant to WCC 20.80.210 and 20.80.230 (3). WCC 20.80.210 (Rural) states minimum building setbacks of 20 feet from the front property line and 5 feet from the rear and side property lines.

Discussion: The applicant is requesting to reduce the required front yard setback from 25 feet to 3'-2.5". The proposal will comply with all other required property line setbacks.

The Technical Review Committee finds that the proposed development, besides the reduction in the front yard setback, will conform to the applicable building setback requirements.

WCC 20.36.400 – Height Limitations:

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

Discussion: The proposed single-family residence appears to conform to this requirement and will be reviewed at the time of building permit for compliance with WCC 20.36.400.

WCC 20.36.450 – Lot Coverage:

Except as follows, no structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total lot area, not to exceed 25,000 square feet. Public community facilities that serve a predominantly rural area shall occupy or cover no more than 35 percent of a lot, with no limitation on structure (or combination of structures) size. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

Discussion: As proposed, the total structural coverage will be less than 5,000 square feet, the maximum allowable coverage.

WCC 20.36.654 – Parking Requirements:

Parking shall conform to the requirements of WCC 20.80.500.

Discussion: The existing site does not have an existing off-street parking space, however, the applicant has proposed maintain the current ingress, egress, and parking. It does not appear from the Commissioner's Proceedings dated December 30, 1975, that the vacation of Railroad Avenue through the

Plat of Blue Canyon City intended to interfere with any private rights of easement. The proceedings state "Such vacation shall not however, prejudice private rights, private easements, prescriptive rights, rights of access, ingress, egress or passage." Parking spaces do not currently exist on the subject property. It appears that the applicants and previous owners have been accessing the subject lot since the home was constructed in 1984 and parking within the vacated easement area.

See Section IX of this document.

WCC 20.36.655 – Drainage:

The proposed project consists of the removal and replacement of a 575 sq. ft. existing home on the above referenced parcel. The replacement will include the addition of a second story that will not extend past the existing building footprint. This project is located within the Lake Whatcom watershed and is subject to the standards of WCC 20.51.

WCC 20.51.420 requires a "phosphorus limiting" stormwater system design for projects which create 500 sq. ft. of new impervious surface or replace more than 1,500 sq. ft. of impervious surface. The project proposal consists of ~ 600 sq. ft. of replaced impervious surface and no new impervious surface. Therefore, the project does not meet the thresholds for a stormwater system design, per WCC 20.51.420.

WCC 20.51.440 requires that no more than 5,000 sq. ft. or 35% of the tree canopy (whichever is greater), be removed. A tree canopy plan was submitted which indicates that no trees will be removed as part of the project.

The seasonal moratorium on exposed soil (WCC 20.51.410) is applicable to this project. Note that permits may be submitted and reviewed all year long. However, work/activities which expose more than 500 sq. ft. are prohibited from October 1 through May 31. Per WCC 20.51.410, permits cannot be issued two weeks prior to October 1.

The PDS Stormwater Office has no objection to approval of either of these permits, with the following conditions:

See Section IX of this document.

Discussion: Whatcom County Stormwater Staff have reviewed the preliminary proposal and further have determined that the project is consistent with applicable codes, as conditioned.

Water & Sewer

Discussion: The property appears to be served by surface water withdrawal

from Lake Whatcom and an on-site sewage system (OSS) that received as-built approval.

The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.

Fire Protection

Discussion: The proposed use is located within the service area designated as Fire District #18. Residential uses are considered Rural levels of services, per the Whatcom County Comprehensive Capital Facility Plan. Therefore, the Technical Review Committee has determined that the project meets the requirements of WCC Chapter 20.80.212. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.

The Technical Review Committee finds that the proposed variance, besides the reduction in the front yard building setback, conforms to the applicable requirements of the Whatcom County Zoning Ordinance.

F. Shoreline Management Program (Title 23)

The Shoreline Master Plan and Shoreline Management Act contain standards that regulate development impacts to shorelines (Title 23).

The shoreline administrator has reviewed the project and commented on July 6, 2021. A review of the shorelines on the site is as follows:

The proposed project consists of the removal and replacement of a 575 sq. ft. existing home on the above referenced parcel and addition of a new concrete stair landing on the south side of the residence. Existing decks will be replaced within the same footprint. The replacement will include the addition of a second story that will not expand the existing building footprint and be built over previously existing impervious surfaces. Additionally, as part of this SFR expansion, the applicant will remove an unpermitted shed and associated concrete pad on the north portion of the parcel. An existing concrete walkway to the south of the residence is also proposed for removal. A propane tank currently located on the adjacent property to the east is to be relocated to the subject property north of the residence.

Lastly, as part of this project, the applicant proposes to remove unpermitted improvements on the adjacent property under County Parks ownership that include an existing bunk house and concrete pad.

At this time, the PDS Shorelines Office has no objection to approval of VAR2020-00006 and SHX2020-00042, with the following conditions:

See Section IX of this document.

G. Health Code (Title 24)

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare. The Whatcom County Health Department (WCHD) reviewed the application and stated no comments or concerns for this application.

Discussion:

Water: The property appears to be served by surface water withdrawal from Lake Whatcom. The proposed project does not appear to increase the existing living space by more than 50%. A satisfactory bacteriological water sample after treatment will be required at the time of final occupancy.

Sewage Disposal: The property is served by an on-site sewage system (OSS) that received as-built approval. The applicant will need to demonstrate that Whatcom County Parks and Recreation agrees with the easement designed by the OSS designer. The applicant will need to hire a licensed OSS designer to determine the extent of the easement needed for the OSS and reserve area prior to building permit application. A formal legal agreement for the easement will be required prior to building permit application.

The Technical Review Committee has determined that the project meets the requirements of WCC Title 24.

See Section IX of this document.

VIII. RECOMMENDATION

The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the applicant's variance request to reduce the required front yard setback, subject to the requested conditions in Section IX of this report.

IX. CONDITIONS OF APPROVAL

1. Permit Changes or Modifications: The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Inadvertent Discovery: If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (778-5900) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan'en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
3. Drainage: All development must comply with the drainage standards found in WCC 20.36.656. Stormwater from the proposed development

shall be controlled in a manner which does not degrade any critical areas or surface waters, or direct water onto neighboring properties.

4. Right to Farm: Pursuant to WCC, Title 14, the owners of the property upon which this variance is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on the building permit issued by Whatcom County Planning & Development Services.
5. Septic: The property appears to be served by a permitted on-site sewage system. The applicant will need to hire a licensed OSS designer to determine the extent of the easement needed for the OSS and reserve area prior to building permit application.
6. Septic: A formal legal agreement for the easement will be required prior to building permit application.
7. Water: A satisfactory bacteriological water sample after treatment will be required at the time of final occupancy.
8. Building Permit: A building permit will be required for this project for previously constructed buildings without permits.
9. The applicant shall demonstrate that all unpermitted structures have been removed prior to final approval of any building permit as detailed on sheet C3 of the Final Revise Site Plans dated June 15, 2021.
10. Prescreening: Submittal of a building permit application requires a prescreening of the project and a prescheduled application appointment. Refer to the *Residential Structures and Detached Accessory Structures - Permit Application Packet* for additional information and a description of the submittal documents required to apply for a building permit. The packet is available in our office or on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.
11. Parking Stalls: Parking appears to be existing. The applicant shall demonstrate at the time of building permit, that the property has legal existing parking spaces.
12. The associated shoreline exemption permit (shx2020-00042) shall be conditioned to incorporate all geologic hazard mitigation measures recommended Geotest Services, and Notice on Title for Regulated Critical Areas will also be required.
13. Any change in the footprint, including but not limited to, addition of laydown or construction areas, installation of new utilities, or any removal

of vegetation shall be reviewed for impacts to critical areas or their buffers prior to the issuance of any development permits.

14. The building permit shall be routed to Critical areas staff and may be conditioned for a pre-development meeting with the hired contractor to ensure that impacts to critical areas do not occur.
15. If, at any time during construction, more than 1,500 sq. ft. of hard surface is replaced (demolished down to the foundation), or more than 500 sq. ft. of impervious is created, a stormwater design showing compliance with WCC 20.51.420 will be required.
16. Activities which expose more than 500 sq. ft. of soil are prohibited from October 1 through May 31.
17. The proposed work shall be consistent with the scope of the application materials reviewed by staff and consistent with the site plans stamped "Site Plan Review Approval" and initialed by the Shoreline Administrator on July 6, 2021, except as conditioned below. Any changes will require additional review by the Whatcom County Shoreline Administrator.
18. Prior to final occupancy, the unpermitted shed and concrete pad located on the north portion of the subject property shall be wholly removed from the property.
19. Prior to final occupancy, the unpermitted bunk house and concrete pad located on the adjacent property to the east shall be wholly removed from the property.
20. The height of the replacement residence shall not exceed 30', as measured from average natural grade to the apex of the roof.
21. 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.
22. 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.
23. In conformance with WCC 16.16.265, prior to issuance of the building permit, the applicant shall file a Notice on Title with the Auditor's Office. The notice shall be filed on forms provided by the County and a copy shall

be provided to the shoreline administrator. This document is available online at: <http://whatcomcounty.us/DocumentCenter/Home/View/2205>

24. All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.
25. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.
26. Washington State Department of Ecology Water Quality Standards shall be maintained.
27. No more than 500 sq. ft. of soil in total shall be exposed from October 1 through May 31.
28. The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
29. 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.
30. 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.
31. 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.
 32. Project Expiration: Project permit approval status shall expire two years from the date of approval except where a different duration of approval is authorized by Whatcom County Code, or is established by a court decision or state law, or executed by a development agreement. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant.

Report prepared for the Technical Review Committee by:

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