

WHATCOM COUNTY HEARING EXAMINER

re: The application of **John Van Boven** for
a Zoning Variance Permit and Shoreline
Statement of Exemption

VAR2019-00007
SHX2016-00057

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 setback from 20 feet to five and a half (5.5) feet. Specifically, the applicant has applied for a variance to build a 192 square foot detached garage in the front yard setback area, addressed as 4419 Sucia Drive, Ferndale, WA.

Decision: The requested Zoning Variance Permit and Shoreline Statement of Exemption are 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: John Van Boven

Site Address: 4419 Sucia Drive
Ferndale, WA 98248

Agent: Jaime White, Whatcom Land Use Consulting
2215 Midway Lane, Suite 203
Bellingham, WA 98226

Assessor's Parcel Number: 380108-439454

Legal Description: BOLSTER'S SANDY POINT TRACTS NO 3 LOT 93

Zoning: Residential Rural (RR3)

Comprehensive Plan: Rural Community

Subarea: NA

Lot Size: 5,865 Square Feet

Roads: Public, Whatcom County Maintained (Sucia Drive)

Water & Sewer Supply: Public Water (Sandy Point Improvement Company) & Sewer (Lummi Sewer)

Fire Protection: Fire District #17

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: School District No. 502 (Ferndale School District)

Topography: The subject site is mostly flat and slopes toward the shoreline

Vegetation: The subject has a maintained lawn and landscaping surrounding the residence

Adjacent Land Uses:

North:	Residential
East:	Residential
South:	Residential
West:	Shoreline

SEPA Review: Categorically exempt from SEPA threshold review.

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 Chapter 12.08, Development Standards
5. Whatcom County Code, Title 14, Use of Natural Resources
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 22, Land Use and Development Procedures
11. Whatcom County Code, Title 23, Shoreline Management Program
12. Whatcom County Code Title 24, Health Regulations

Legal Notices: Mailed – Notice of Public Hearing, June 29, 2021
Posted – Notice of Public Hearing, July 6, 2021
Published – Notice of Public Hearing, July 7, 2021
Online Publication of Agenda and Zoom links – July 6, 2021

Hearing Date: July 21, 2021

Parties of Record:

Robby Eckroth
WC Planning and Development Services
5280 Northwest Drive
Bellingham, WA 98226

Jaime White
Whatcom Land Use Consulting
2215 Midway Lane, Suite 203
Bellingham, WA 98226

Jacob Hovenier
4393 Sucia Drive
Ferndale, WA 98248

Hearing Examiner Exhibit List:

01. var2019-00007-revised-application
02. var2019-00007-agent-authorization
03. shx2016-00057-revision-request-form
04. var2019-00007-preliminary-stormwater-proposal
05. var2019-00007-preliminary-traffic-concurrency-info
06. var2019-00007-revocable-encroachment-permit
07. var2019-00007-statutory-warranty-deed
08. var2019-00007-revised-site-plan
09. var2019-00007-receipts
10. var2019-00007-flood-elevation-cert
11. var2019-00007-det-completeness
12. var2019-00007-legal-notice
13. var2019-00007-mailing-notice
14. var2019-00007-vicinity-map
15. var2019-00007-site-visit-photos
16. var2019-00007-public-comment

17. var2019-00007-noar-w-memos
18. var2019-00007-staff-memos
19. var2019-00007-staff-report
20. var2019-00007-he-exhibit-list
21. Legal Notice – Receipt of Payment
22. Certificate of Mailing
23. Certificate of Posting
24. Email in Support – Jacob Hovenier 7.20.2021

II.

The Applicant is requesting a Zoning Variance to reduce the front setback from 20 feet to five and a half (5.5) feet. Specifically, the applicant has applied for a variance to build a 192 square foot detached garage in the front yard setback area.

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.

There was no public comment at the Hearing. The only public comment was emailed, received, reviewed, and addressed by the parties at the hearing.

V.

BRWCHE §2.4 grants parties the right to object to evidence and to cross-examine. In the case at hand, no objection was made any of the 24 exhibits that were admitted into the record. Admitted Exhibits 1-24 are deemed to be factually accurate in regard to the facts represented therein.

VI.

The Findings of Fact of Whatcom County Planning and Development Services, as set

forth in the Staff Report, dated July 21, 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. Due to the constraints of the parcel size, the shoreline buffer, and the front yard set back area, there is inadequate area to build a garage without approval of a zoning variance. 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 John Van Boven to a reduce the front setback from 20-ft to 5.5-ft to build a 192-sq.ft. detached garage in the front yard setback area. Assessor's Parcel No.380108-439454, addressed as 4419 Sucia Drive, Ferndale, 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) LNTPO (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 20.32.656.
4. Building Permit: A building permit will be required for this project if the garage does not meet all of the exemption criteria listed in Section R105.2 of the International Residential Code (see Plans Examiner's memo).
5. Prescreening (if building permit is required): 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.
6. Approved Site Plan: The proposed work shall be consistent with the scope of the application materials provided reviewed by staff and consistent with the site plan stamped "Shoreline Approved" on February 7, 2020 except as conditioned below. Any changes will require additional review by the Whatcom County Shoreline Administrator.
7. Future Expansions: No other expansion may be granted as a Shoreline Statement of Exemption for 100 years from the date of this determination, pursuant to WCC 23.50.070.J. This does not necessarily preclude a landowner from applying for a future expansion through a Shoreline Conditional Use Permit.
8. Notice on Title: 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>
9. Water Quality: The project shall adhere to Washington State Department of Ecology (DOE) water quality and all other applicable water quality standards. Quality of ground and surface waters shall not be significantly degraded.

10. Construction Debris: All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations
11. Surface Waters: The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
12. Other Permits: 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.
13. Expiration: 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.
14. Flood Proofing: Flood proofing requirements, according to Whatcom County Code Chapter 17.16, will be required for the structure.
15. Flood Vents: Flood vents for the structure shall be provided with a total net open area not less than 1 square inch per 1 square foot of the enclosed area below the BFE (or equivalent engineered vents) with a minimum of two openings, on different sides of each enclosed area. The bottom of each opening shall be no more than one foot above the adjacent grade. Any louvers, screens or other opening covers must not block or impede the automatic flow of floodwaters into and out of the enclosed area.
16. Water Resistant Materials: The portion of the structure and associated building materials located below the BFE must be water resistant.
17. Anchoring: The structure must be anchored to resist floatation, collapse, and lateral movement.
18. Structure Elevation: The elevation of any enclosed area (or bottom floor area) must have a minimum of one side equal to or above the adjacent ground outside of the structure (no sub-grade crawl space on all sides) and must be used for storage and access only.
19. Best Management Practices (BMPs): Construction BMPs shall be used, as necessary, to reduce or eliminate any construction related impacts within the SFHA/FFA.
20. As-built Documentation: The applicant shall submit as-built photo documentation

demonstrating that the improvements were built in accordance with Whatcom County Flood Damage Prevention Code (WCC Title-17).

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be 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 this title 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
REVISED STAFF REPORT*

Date: July 21, 2021

The application by John Van Boven for a Zoning Variance.	VAR2019-00007, SHX2016-00057 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
---	---

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: **Variance and Shoreline Statement of Exemption:** The applicant is requesting a Zoning Variance to reduce the front setback from 20 feet to five and a half (5.5) feet. Specifically, the applicant has applied for a variance to build a 192 square foot detached garage in the front yard setback area.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Owner/Applicant: John Van Boven
4419 Sucia Drive
Ferndale, WA 98248

Agent: Jaime White
2215 Midway Lane, Suite 203
Bellingham, WA 98226

Site Location/Address: 4419 Sucia Drive
Ferndale, WA 98248

Legal Description: BOLSTER'S SANDY POINT TRACTS NO 3 LOT 93

Assessor's Parcel Number: 380108-439454

Zoning: Residential Rural (RR3)

Comprehensive Plan: Rural Community

<u>Subarea:</u>	N/A
<u>Lot Size:</u>	5,865 Square Feet
<u>Roads:</u>	Public, Whatcom County Maintained (Sucia Drive)
<u>Water & Sewer Supply:</u>	Public Water (Sandy Point Improvement Company) & Sewer (Lummi Sewer)
<u>Fire Protection:</u>	Fire District #17
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	School District #502 (Ferndale School District)
<u>Shoreline Jurisdiction:</u>	Shoreline Residential
<u>Topography:</u>	The subject site is mostly flat and slopes toward the shoreline
<u>Vegetation:</u>	The subject has a maintained lawn and landscaping surrounding the residence.
<u>Adjacent Land Uses:</u>	North: Residential East: Residential South: Residential West: Shoreline

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 Chapter 12.08, Development Standards
5. Whatcom County Code, Title 14, Use of Natural Resources
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 22, Land Use and Development Procedures
11. Whatcom County Code, Title 23, Shoreline Management Program
12. Whatcom County Code Title 24, Health Regulations

III. APPLICATION PROPOSAL

The applicant is requesting a zoning variance to reduce the front yard setback from 20 feet to five and a half (5.5) feet. The variance is being requested in order to 192 square foot garage. The applicant is requesting a zoning variance to the front yard setback as the shoreline management program will not allow expansion toward the shoreline, thus leaving no other possible location for a garage. Since the project proposal is located within Whatcom County Shoreline Jurisdiction, the applicant has also applied for a revision to a Shoreline Statement of Exemption for this proposal which shall be reviewed and approved concurrently pursuant to WCC 22.05.030 and 23.60.100(B). The original Shoreline Statement of Exemption was for an expansion to the single-family residence. The previous property owner only built part of the addition.

IV. SITE DESCRIPTION

The subject lot is 5,865 square feet and is located at 4419 Sucia Drive, Ferndale, WA 98248 within Section 08, Township 38 North, Range 01 East W.M., Whatcom County, WA. The site is currently developed with a 1,642 square foot single-family residence. The subject site is mostly flat and slopes toward the shoreline to the west. The site is accessed from a Sucia Drive.

The surrounding properties are zoned Residential Rural (RR3) to the north, east, and south, and is adjacent to shoreline to the west. Many of the surrounding properties are also nonconforming in regards to WCC 20.80.200 – Setbacks.

V. VARIANCE PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter WCC 22.05.080.

Notice of Application: The Notice of Application for this proposal was published on June 07, 2019 in the Bellingham Herald and on the County website. A notice of application was sent to 103 owners of property within 1,000 feet on June 07, 2019. The site was posted on June 07, 2019.

Public Comment: The fourteen (14) day public comment period ended on June 21, 2019. During this period, staff received one (1) comment in support of the proposed project.

VIII. 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.

IX. 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:

- 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 is based upon reasons of hardship caused by previous actions or is for pecuniary reasons. In fact, the granting of the variance would be consistent with the surrounding development. The surrounding development consists of single-family residences on small lots that are also encumbered by restrictions imposed by the Whatcom County Shoreline Management Program. The subject lot is limited in size that is also limited by a 150 feet shoreline buffer which poses constraints for any development on the parcel while complying with Whatcom County's development standards. In order for the applicant to add a 192 square foot garage, a variance approval is needed. Many of the surrounding lots are also substandard and most do not comply with today's development standards.

- 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.**

The applicant has proposed to construct a 192 square foot garage in the front yard setback. The lot is 5,865 square feet in area. According to WCC 20.80.210 & 20.80.230 (3), there is a minimum 20 foot setback from the property line fronting Sucia Drive and a five (5) foot setback from all other property lines. There is also a 150 foot shoreline buffer pursuant to WCC 16.16.740(C). As such, any development on the property is restricted because of the size of the lot, shoreline buffer, and the front yard setback.

The minimum lot size in the Residential Rural (RR3) zone is 12,000 square feet for a conventional lot. Due to the constraints of the lot listed above, and in order to build within the existing build footprint of the single-family residence, the applicant is requesting to reduce the required front yard setback from 20 feet to five and a half (5.5) feet.

Staff also believes that the proposed variance is not being requested for aesthetic reasons. Due to the size constraints of the parcel, the shoreline buffer, and the front yard setback area, there is limited area in which the applicant can place a garage.

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.

- 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.**

Setbacks from roads and property lines are required for safety and aesthetic reasons. The granting of the variance will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity. Based on a memo submitted April 15, 2021, Whatcom County Public Works Engineering has determined that the location of the garage does not interfere with clear vision area and will not cause any site distance issues. Granting of the variance will not be detrimental to the public health, safety or welfare or injurious to other property.

The Technical Review Committee finds that the requested variance meets the three requirements of WCC 20.84.120.

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 April 15, 2021 with the following comments:

The applicant has submitted a revised variance request (revised Site Plan received by PDS on 3/10/21) to reduce their front setback for the construction of a 12' X 16' shed. The clear vision area does not appear to be affected by the construction of the new structure. The project site is located at 4419 Sucia Drive. Sucia Drive is classified as a rural minor collector with a sixty foot right-of-way.

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.

The Whatcom County Building Services reviewed the proposal and submitted a memo dated June 01, 2021 recommending approval with conditions.

Fire Code: The Whatcom County Fire Marshal submitted a memo dated April 15, 2021 stating no conditions, concerns, or comments on this project at this time.

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.

Whatcom County Planning & Development Services Department of Natural Resources Division Critical Areas staff reviewed the proposal and determined that there will be no net loss from this proposal as it will be located on a previously impacted surface.

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

E. WCC Title 17- Flood Damage Prevention

The purpose of this title is to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas in a manner that does not adversely affect endangered species or their habitats.

Whatcom County Public Works, River and Flood Division staff reviewed the proposal and submitted a memo dated May 25, 2021 with the following comments:

The subject variance to reduce the minimum setback of 20 feet down to 5 feet on Sucia Drive to provide space for the construction of a shed at 4419 Sucia Drive (Parcel # 380108-439454) is on a parcel shown to be located within a Special Flood Hazard Area (SFHA), specifically Flood Zone VE with a Base Flood Elevation (BFE) of 17 Feet, Flood Zone AE with a BFE of 15 Feet, and Flood Zone AE with a BFE of 13 Feet (NAVD88). The following comments and conditions are based on submitted documents to date; any changes will require another review for compliance...

The Technical Review Committee has determined that the proposed variance will meet the requirements of WCC Chapter 17 with conditions.

F. WCC Title 20 – Official Whatcom County Zoning Ordinance

The subject property is located in the Residential Rural (RR3) zoning district (WCC 20.32).

WCC 20.32.350 – Building Setback Criteria:

Building setbacks shall be administered pursuant to WCC 20.80.210 and 20.80.230 (3).

WCC 20.80.210(b) (Residential Rural) states minimum building setbacks of 25 feet from the front property line from properties abutting a minor collector road and 5 feet from the rear and side property lines. WCC 20.80.230(2) allows for a reduction of the front yard setback to 20 feet by the zoning administrator or hearing examiner when a property is so encumbered by a shoreline setback that a typical structure

cannot be built due to dimensional requirements.

Discussion: The subject zoning variance is for a reduction of the front yard setback from 20 feet to five and a half (5.5) feet for the purpose of building garage in accessory to an existing single-family residence. The proposed garage will meet all other required zoning 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 20.32.400 – 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 building height shall be less than 35 feet in height pursuant to WCC 20.32.400.

WCC 20.32.450 – 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.

Discussion: As proposed, the total structural coverage will be 1,834 square feet which is less the maximum allowable coverage of 5,000 square feet.

WCC 20.32.654 – Parking Requirements:

Parking shall conform to the requirements of WCC 20.80.500, which requires two (2) off-street parking stalls with a minimum rectangular dimension of 10 feet in width and 20 feet in length.

WCC 20.80.545 requires parking areas for one-family and two-family dwellings if located within the required front yard setback areas shall have a setback of at least 4 feet from the road right-of-way. In no case shall any part of a parking area be closer than four feet to any established street or alley right-of-way.

Discussion: The applicant has shown on the site plan that there is room dedicated for two (2) off-street parking spaces that meet the 10 foot by 20 foot dimensional requirements for off-street parking pursuant to WCC 20.80.510.

WCC 20.32.656 – Drainage:

All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No project permit shall be issued prior to meeting those requirements.

Discussion: Whatcom County Stormwater staff has reviewed the proposal for stormwater impacts and has no concerns.

Water & Sewer

Discussion: Due to the scope and location of the project, sewer and water availability will not be required at the time of building permit application.

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 #17. 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 and side yard building setbacks, conforms to the applicable requirements of the Whatcom County Zoning Ordinance.

G. Shoreline Management Program (Title 23)

Pursuant to the Whatcom County Shoreline Management Program (SMP), Title 23, Section 23.60.022.G exempts a property owner, lessee or contract purchaser from the requirement to obtain a shoreline substantial development permit for construction of a single-family residence for their own use or for the use of their family. Single family residence means a detached dwelling designed for an occupied by one (1) family including those structures and developments within a contiguous ownership which are a normal appurtenance as defined in WCC 23.110.A.

This lot is subject to a 150 ft. Habitat Conservation Area (HCA) buffer, which extends upland 150 ft. from the Ordinary High Water Mark (OHWM). On the subject lot, this buffer extends over the entire parcel, making the parcel a nonconforming lot due to the presence of the HCA buffer. Pursuant to WCC 23.50.070.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 on nonconforming lots without

a conditional use permit or variance once during the life of the structure (100 years). The structure shall be located landward of the OHWM, 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).

The proposal is consistent with the provisions stated above. The Shoreline Exemption permit issued on November 4, 2016 approved an expansion of 388 sq. ft., located over existing impervious surface. The applicant later changed their proposal, and an expansion of only 144 sq. ft. was constructed. This current proposal adds 192 sq. ft. for a total of 336 sq. ft.

The proposal is consistent with the policies and regulations of the Washington State Shoreline Management Act and the Whatcom County Shoreline Management Program subject to the conditions attached to this exemption.

The requested Shoreline Statement of Exemption has been determined to be consistent with the SMP and staff recommends approval subject to the attached conditions. Note that pursuant to Section 23.60.200, the applicant or any opponent of this determination may appeal this administrative permit decision to the office of the Hearing Examiner. The application for appeal from the Shoreline Administrator's decision may be obtained at the Planning and Development Services Office. Such an appeal shall be filed within twenty (20) calendar days of the Hearing Examiner's determination.

Note that obtaining a shoreline statement of exemption for a development or use does not excuse the applicant from complying with any other State, regional, Federal statutes or regulations applicable to such development or use.

H. 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 recommends approval with conditions.

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

X. 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 for a garage, subject to the requested conditions in Section IX of this report.

XI. 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 20.32.656.
4. Building Permit: A building permit will be required for this project if the garage does not meet all of the exemption criteria listed in Section R105.2 of the International Residential Code (see Plans Examiner's memo).
5. Prescreening (if building permit is required): 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.

6. Approved Site Plan: The proposed work shall be consistent with the scope of the application materials provided reviewed by staff and consistent with the site plan submitted to staff on May 19, 2021. Any changes will require additional review by the Whatcom County Shoreline Administrator.
7. Future Expansions: No other expansion may be granted as a Shoreline Statement of Exemption for 100 years from the date of this determination, pursuant to WCC 23.50.070.J. This does not necessarily preclude a landowner from applying for a future expansion through a Shoreline Conditional Use Permit.
8. Notice on Title: 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>
9. Water Quality: The project shall adhere to Washington State Department of Ecology (DOE) water quality and all other applicable water quality standards. Quality of ground and surface waters shall not be significantly degraded.
10. Construction Debris: All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.
11. Surface Waters: The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
12. Other Permits: 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.
13. Expiration: 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.
14. Flood Proofing: Flood proofing requirements, according to Whatcom County Code Chapter 17.16, will be required for the structure.

15. Flood Vents: Flood vents for the structure shall be provided with a total net open area not less than 1 square inch per 1 square foot of the enclosed area below the BFE (or equivalent engineered vents) with a minimum of two openings, on different sides of each enclosed area. The bottom of each opening shall be no more than one foot above the adjacent grade. Any louvers, screens or other opening covers must not block or impede the automatic flow of floodwaters into and out of the enclosed area.
16. Water Resistant Materials: The portion of the structure and associated building materials located below the BFE must be water resistant.
17. Anchoring: The structure must be anchored to resist floatation, collapse, and lateral movement.
18. Structure Elevation: The elevation of any enclosed area (or bottom floor area) must have a minimum of one side equal to or above the adjacent ground outside of the structure (no sub-grade crawl space on all sides) and must be used for storage and access only.
19. Best Management Practices (BMPs): Construction BMPs shall be used, as necessary, to reduce or eliminate any construction related impacts within the SFHA/FFA.
20. As-built Documentation: The applicant shall submit as-built photo documentation demonstrating that the improvements were built in accordance with Whatcom County Flood Damage Prevention Code (WCC Title-17).

Report prepared for the Technical Review Committee by:

Robby Eckroth
Planner II – Current Planning

and

Kyla Walters
Planner II – Shoreline Administrator