

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT)	SHR2013-0001
SHORELINE VARIANCE)	SHV2013-0001
ZONING CONDITIONAL USE PERMIT)	CUP2013-0001
Application for)	
)	
Joel and Tanja Mortyn)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit, Shoreline Variance and a Zoning Conditional Use Permit to improvement an existing recreational lot at Toad Lake, including relocating and repairing an existing nonconforming recreational vehicle (RV), and constructing a new parking area, a dock, and two sets of stairs to access the shoreline.

Decision: The requested permits are granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

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

I.

PRELIMINARY INFORMATION

Applicant: Joel and Tanja Mortyn

Property Owner: Tanja Mortyn

Property Location/Address: 1777 Emerald Lake Way, Bellingham, Washington

Legal Description: Lot 77, Plat of Emerald Lake, within
Section 11, Township 38 North, Range 3 East, W.M.

Assessor's Parcel No. 380311 204147 0000

Adjacent Water Body: Toad Lake

Shoreline Designation: Shoreline Residential & Aquatic

Shoreline of State-Wide Significance: No

Zoning Designation: Residential Rural 2 (RR2)

Comprehensive Plan Designation: Rural Community

Authorizing Ordinances:

SMP 23.50	Applicability
SMP 23.70	Administration
WCC 20.32	Rural Residential (RR) District
WCC 20.83	Nonconforming Uses
WCC 20.84	Conditional Uses

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.10	Shoreline Residential Area
SMP 23.60.02	Shoreline Substantial Development Permit Criteria
SMP 23.50.07	Non-conforming Development
SMP 23.60.03	Variance Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.110	Residential
SMP 23.100.090	Moorage: Docks, Piers and Mooring Buoys
SMP 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS), issued on March 22, 2013, by Whatcom County Planning and Development Services

Legal Notices: Published – Notice of Application and SEPA DNS, February 6, 2013
- Notice of Public Hearing, June 6, 2013
Posted – Notice of Public Hearing, June 7, 2013
Mailed – Notice of Public Hearing, May 30, 2013

Hearing Date: June 19, 2013

Parties of Record

Joel and Tanja Mortyn
666 East 12th Avenue
Vancouver, BC V5T 2H8
CANADA

Sam McDaniel and Nick Smith
Planning and Development Services

Exhibits

1 Land Use Application with attachments

- 1-1 Fee Responsibility
 - 1-2 Agent Authorization
 - 1-3 Supplemental Application, SHV2013-0001
 - 1-4 Supplemental Application, SHR2013-0001
 - 1-5 General Project Description
 - 1-6 Customer Receipt
 - 1-7 Affidavit of Nonconforming Use, July 7, 1993
 - 1-8 Whatcom County Land Disturbance and Clearing Application Info, Jan 15, 2013
 - 1-9 Staff Email re: Hearing Schedule
 - 1-10 Mailing Labels
 - 1-11 Determination of Completeness, January 23, 2013
 - 1-12 PDS Form Comment Letter, Feb 6, 2013
 - 1-13 Preliminary Stormwater Proposal, Jan 15, 2013
 - 1-14 Revocable Encroachment Permit Application, Jan 16, 2013
 - 1-15 Preliminary Traffic and Concurrency info, Jan 15, 2013
- 2 Staff Report, June 19, 2013
 - 3 SEPA DNS, March 22, 2013, with attached Planner Checklist, February 6, 2013, SEPA Checklist and Distribution List
 - 4 Site Plans, Dec 20, Nov 2 and Nov 21, 2012 [3 sheets]
 - 5 Aerial Site Photo
 - 6 Legal Notice of Application and SEPA DNS, Feb 6, 2013
 - 7 Certificate of Mailing Notice of Public Hearing, May 30, 2013
 - 8 Legal Notice of Public Hearing, June 6, 2013
 - 9 Certificate of Posting Notice of Public Hearing, June 7, 2013
 - 10 Quit Claim Deed
 - 11 Listing of Lots within 1000 feet of Lot 77
 - 12 Agency Comments:
 - ~ Flood Review, Feb 12, 2013
 - ~ Fire Marshal, Feb 7, 2013
 - ~ Watersheds Office, March 11, 2013
 - ~ PW Engineering Services, Feb 19, 2013
 - ~ Plans Examiner, Feb 6, 2013
 - ~ Evaluation of Declining Red Alder, Toad Lake Shorelines, prepared by Tree Guys Inc, 05/22/13
 - ~ Critical Areas Review, June 10, 2013
 - 13 Certificate of Mailing, Notice of Application and Optional DNS, Feb 6, 2013

II.

The Applicants seek approval of a Shoreline Substantial Development Permit, Shoreline Variance, and Zoning Conditional Use Permit to improve an existing recreational lot, located on

the shores of Toad Lake, at 1777 Emerald Lake Way, Bellingham, Washington. The proposed improvements include relocating and repairing an existing nonconforming recreational vehicle (RV), and construction of a new parking area, a dock, and two sets of stairs for accessing the shoreline.

III.

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner and Zoning Administrator for the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit #2, dated June 19, 2013, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

IV.

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

CONCLUSIONS OF LAW

I.

The Whatcom County Shoreline Planner and Zoning Administrator have recommended approval of the requested Shoreline and Zoning Permits for the proposed construction of a dock, and relocation and repair of an existing nonconforming recreational vehicle, as well as the construction of two sets of stairs to access the shoreline.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated June 19, 2013. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, with the Goals and Policies of the Whatcom County Shoreline Management Program, and with the Criteria for a Zoning Conditional Use Permit under WCC 20.84.200. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

II.

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

DECISION

A Shoreline Substantial Development Permit, Shoreline Variance, and Zoning Conditional Use

Permit are hereby granted to Joel and Tanja Mortyn to relocate and repair an existing nonconforming recreational vehicle (RV), and to construct a new parking area, a dock, and two sets of stairs to access the shoreline of Toad Lake, on property located at 1777 Emerald Lake Way, Bellingham, Washington. The permits are granted subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plans approved by this Shoreline Substantial Development Permit, Zoning Conditional Use Permit, and Shoreline Variance. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Zoning Administrator and/or Whatcom County Hearing Examiner.
2. Construction and/or demolition debris shall be wholly removed from the shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority. Offsite deposition of excavation spoils, concrete debris, etc., within unincorporated Whatcom County, will require a Land Disturbance Permit from Whatcom County Planning and Development Services.
3. If archaeological materials (shell midden, faunal remains, stone tools) or human remains are observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. Whatcom County SEPA Administrator (676-6907), LNTHPO (384-2280), and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all other applicable laws pertaining to archaeological resources is required.
4. The Applicant shall obtain a Building Permit from the Whatcom County Planning & Development Services – Building Services Division prior to start of construction on the subject property. Such Building Permit shall require development review by the Shoreline Administrator pursuant to 23.60.02.2.B. The building permit submittal shall include site plans consistent with the plans approved by this permit and provide an engineered design as determined by Building Services.
5. The Applicant/Proponent shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other necessary approvals as determined by the WDFW. A copy of the issued HPA shall be included with the above-required building permit application for review by the Shoreline Administrator.
6. The Applicant shall submit a Temporary Erosion and Sedimentation Control Plan for review by the Shoreline Administrator prior to issuance of future development permits. The TESC plans shall demonstrate the BMP's utilized on the neighboring lot once the RV is moved to ensure soil stabilization.
7. The Applicant shall comply with all of the requirements of the Whatcom County Critical Areas Technical Administrator prior to any development approvals as outlined in the June 10, 2013 memorandum unless modified by PDS or appealed to the appropriate agency.

8. The Applicant shall comply with all of the requirements of the Whatcom County Building Services Department prior to any development approvals as outlined in the February 6, 2013 memorandum unless modified by PDS or appealed to the appropriate agency
9. The Applicant shall comply with all of the requirements of the Whatcom County Division of Engineering prior to any development approvals as outlined in the February 19, 2013 memorandum unless modified by the Division of Engineering or appealed to the appropriate agency.
10. Occupancy of the recreational vehicle shall not exceed a total of 180 days per calendar year. "Recreational Use" status was granted per the nonconforming use affidavit (AF # 930707168).
11. Piers and docks in lakes providing a public water supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete or steel.
12. Dock surfaces designed to allow maximum light penetration shall be used on walkways or gangplanks in nearshore areas.
13. Piers and docks shall use pile supports unless engineering studies demonstrate that pile supports are insufficient to ensure public safety. Riprapped or bulkheaded fills may be approved only as a Conditional Use and only when demonstrated that no feasible alternative is available. Mitigation shall be provided to ensure no net loss of shoreline ecological functions and processes.
14. Approaches to piers and docks shall use piers or other structures to span the entire upper foreshore to the point of intersection with stable upland soils and shall be design to avoid interference with littoral drift or wave refraction. Limited fill or excavation may be allowed landward of the OHWM to match the upland with the elevation of the pier or dock.
15. If a dock is provided with railing, such railing shall not exceed 36 inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties or lawful use of water surfaces.
16. Water supply, sewage disposal and disposal of non-hazardous materials associated with activities on docks and piers shall conform to applicable health standards.
17. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
18. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.
19. No pier or dock shall be used for a residence.

20. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.
21. The Applicant shall comply with all of the requirements of the Whatcom County Watershed Technical Administrator prior to any development approvals as outlined in the March 11, 2103 memorandum unless modified by PDS or appealed to the appropriate agency.
22. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

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

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

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

Any Party of Record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an Appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If Appeal is made to the County Council, notice of appeal shall be provided to

all Parties of Record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's Decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

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

DATED this 27th day of June 2013.

A handwritten signature in cursive script that reads "Michael Bobbink". The signature is written in dark ink and is positioned above a horizontal line.

Michael Bobbink, Hearing Examiner