

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE VARIANCE) SHV2011-0003
Application for)
)
Michael and Lesley Beckley) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant requests a Shoreline Variance relief from the shore setback requirements of Lummi Bay in order to construct a new single-family residence and appurtenant developments.

Decision: The requested permit is 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: Michael and Lesley Beckley

Property Location: 3209 Sunset Way
Bellingham, WA 98226

Legal Description: Section 26, Township 38 North, Range 01 East, W.M.
Assessor's Parcel No. 380126 072451

Adjacent Water Body: Lummi Bay

Shoreline Designation: Shoreline Residential

Statewide Significance: Yes

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.10	Purpose and Intent
SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Jurisdiction and Area Designations
SMP 23.50	Applicability
SMP 23.60	Shoreline Permits and Exemptions
SMP 23.70	Administration
SMP 23.80	Legal Provisions
SMP 23.90	General Policies and Regulations
SMP 23.100.100	Residential Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Categorically Exempt, pursuant to WAC 197-11-800(1)(b)(i).

Legal Notices: Published – Notice of Application, January 25, 2012
Notice of Public Hearing, January 10, 2013
Posted – January 10, 2013
Mailed – January 4, 2013

Hearing Date: January 23, 2013

Parties of Record

Michael and Lesley Beckley
21822 Sixth Ave West
Bothell, WA 98021

Deborah Todd
688 Chuckanut Drive
Bellingham, WA 98226

Lyn Morgan Hill
Planning and Development Services

Exhibits

- 1 Land Use Application with attachments
 - 1-1 Supplemental Application
 - 1-2 Fee Responsibility
 - 1-3 Mailing Labels and List of Property Owners
 - 1-4 PDS Form Letter/Comment, January 17, 2011 [sic]
 - 1-5 Determination of Completeness, January 17, 2012
 - 1-6 Staff email re: scheduling hearing
- 2 Staff Report, dated November 30, 2012
- 3 Tsunami Hazard Evaluation, prepared by GeoTest, July 31, 2012, approved by Doug Goldthorp, November 30, 2012
- 4 Aerial Photos of Site

- 5 Record of Survey
- 6 Legal Notice of Application, January 25, 2012
- 7 Legal Notice of Public Hearing, January 10, 2013
- 8 Certificate of Posting, Notice of Public Hearing, January 10, 2013
- 9 Certificate of Mailing, Notice of Public Hearing, Jan 4, 2013

II.

The Applicants, Michael and Lesley Beckley, are seeking approval of a Shoreline Variance to reduce the shore setback from Lummi Bay in order to construct a single-family residence and associated appurtenant developments in order to obtain a better view from the subject development.

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. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit #2, dated November 30, 2012, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

There was no public comment either in writing or at the public hearing on this proposal.

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 has recommended approval of the requested Shoreline Variance Permit for the proposed reduction from Lummi Bay for the construction of a single-family residence and associated appurtenant developments.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated November 30, 2012. 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, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law. The Hearing Examiner has carefully reviewed the Staff Report, the record as a whole, and the Shoreline Variance Criteria

applicable to this application. The Hearing Examiner concurs with the Conclusions of Law reached by the Shoreline Planner in the Staff Report, Exhibit No. 2.

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 Variance Permit is hereby granted to Michael and Lesley Beckley granting shore setback relief from Lummi Bay to construct a single-family residence and associated appurtenant developments, to be located on Assessor's Parcel No. 380126 072451, at 3209 Sunset Way, Bellingham, Washington. The permit is granted subject to the following conditions:

1. The Applicant shall obtain a building permit from the Whatcom County Planning and Development Services – Building Services Division prior to any development activity on the subject property.
2. The proposed single-family residence shall not exceed 30-feet in height as measured from average existing grade to the peak of the structure.
3. Required mitigation shall be consistent with the planting plan, monitoring, maintenance and surety provisions outlined within the Shoreline Buffer Mitigation Plan, dated September 18, 2012, by Miller Environmental Services.
4. The owner shall record a notice on title with the County Auditor real estate records in a format approved by the Shoreline Administrator and provide a copy of the filed notice to WCPDS prior to issuance of a building permit. The notice shall state the general presence of the marina basin and the remaining buffer on the subject property, and the fact that limitations on actions in or affecting the areas exist. A copy of the approved site plan illustrating the areas shall also be filed with the notice on title.
5. Prior to issuance of a building permit, the Applicant/Proponent shall submit a TESC Plan identifying what BMPs will be implemented to control erosion and sedimentation throughout the duration of the construction phase of the project.
6. Prior to issuance of a building permit, the Applicant/Proponent shall submit a Stormwater Management Plan consistent with the Washington State Department of Ecology (DOE) Stormwater Manual. The design shall incorporate infiltration systems that mimic the natural infiltration to the maximum extent possible.
7. Exterior surfaces of the proposed residence shall employ materials that minimize reflected light.
8. Vegetation clearing shall be limited to the minimum necessary to accommodate the proposed residential development. Clearing limits have been established on the approved site plans. Wire-backed exclusion/silt fencing shall be installed at such locations prior to start of construction and maintained throughout the construction process.

9. The Applicant shall not clear the existing vegetation between the existing maintained lawn area to the OWHM. This area is relatively well-functioning and shall remain intact and allowed to mature.
10. In the event that archaeological materials are encountered during the development of the property, an archaeologist should immediately be notified and work halted in the vicinity of the find until the materials can be inspected and assessed. At that time the appropriate persons are to be notified of the exact nature and extent of the resource so that measures can be taken to secure them. In the event of inadvertently discovered human remains or indeterminate bones, pursuant to RCW 68.50.645 all work must stop immediately and law enforcement should be contacted. Any remains should be covered and secured against further disturbance, and communication established with the Whatcom County Sheriff's Department, an Assistant State Archaeologist at DAHP, the Lummi Nation Tribal Historic Preservation Office and the Nooksack Tribal Historic Preservation Officer.
11. The proposed driveway and parking areas shall be constructed using pervious technologies. In addition, the at-grade patio area shall also be constructed of pervious materials and decking installed above the area spaced appropriately to allow the passage of water to the pervious surfaces below (23.090.05.B.3). Prior to issuance of a building permit, manufacturer's specifications on the type of pervious surface to be utilized and construction details shall be submitted for review and approval by County water quality inspectors. These pervious areas shall be maintained in perpetuity pursuant to manufacturer's specifications.
12. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties, prevent glare on adjacent properties and to prevent hazards.
13. No development shall be located within the requisite 5-foot side yard setbacks as measured from the north and south property lines that intersect the shoreline.
14. The proposed single-family residence shall not exceed a maximum height of 30-feet as measured from average existing grade to the peak of the structure.
15. The subject site is considered a REGULATED TSUNAMI INUNDATION HAZARD under the Critical Areas Ordinance, WCC 16.16. A qualified Washington State Engineer or Engineering Geologist has assessed the hazard and has made mitigating and / or construction recommendations in a professional report, by GeoTest dated July 31, 2012, included as an addendum to this condition. These recommendations shall be followed in their entirety.
16. Authorization to conduct development activities shall terminate five (5) years after the effective date, as defined in 23.60.19.A.3, of this shoreline variance, provided that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit and notice of the proposed extension is given to parties of record and the Department of Ecology. Construction shall commence within two years of the effective date of the Shoreline Variance as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed

extension is given to parties of record and the Department of Ecology.

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 23rd day of January 2013.



Michael Bobbink, Hearing Examiner