

WHATCOM COUNTY HEARING EXAMINER

RE: Administrative Appeal) APL2010-0021
Application for)
Cedar Cove, L.L.C.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPEAL AND DECISION

Appeal: Cedar Cove, L.L.C. is appealing a Notice of Additional Requirements requested by Whatcom County Planning and Development Service during the review of an Application for a Shoreline Conditional Use Permit.

Decision: WCC 20.80.505 does not require the Appellants to provide an off-street parking spot for the expansion of a nonconforming structure which is enlarged by less than 50%. The Appeal is UPHELD.

FINDINGS OF FACT

I. Background Information

Appellant: Cedar Cove, L.L.C.

Site Location/Address: 1120 Lake Whatcom Boulevard
Bellingham, WA 98226

Assessor's Parcel Number(s): 370420 550325

Zoning: Rural (R2A)

Authorizing Codes, Policies, Plans, and Programs:
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

Legal Notices: Certificate of Posting: Notice of Open Record Hearing, November 2, 2010
Legal Notice of Open Record Hearing, November 4, 2010

Hearing Date: November 17, 2010

Exhibits:

- 1 Administrative Appeal Application with attachments
 - 1-1 Appeal Statement
 - 1-2 Letter dated August 2, 2010, from Sam McDaniel re: SMP Review
 - 1-3 PDS Watersheds Request for Additional Information, dated July 30, 2010 to Jay Irwin re: Permit Application: SHC2010-0006
 - 1-4 Letter dated August 11, 2010, from Jay Irwin to Sam McDaniel, re: Request for Reconsideration
 - 1-5 Letter, not dated, from Bernie Hansen re: Remodel, SHC2010-0006
 - 1-6 Letter, dated August 11, 2010, from Jim Wiggins re: SMP Review
 - 1-7 Letter, dated July 27, 2010 from Scot Swanson re: Cedar Cove, LLC
 - 1-8 Email correspondence Memo, dated August 20, 2010 from Chad Yunge to Scot Swanson re: SHC2010-0006
 - 1-9 Email correspondence Memo, dated September 10, 2010, from Chad Yunge to Jay Irwin re: checking-in
 - 1-10 Email correspondence Memo, dated September 17, 2010, from Chad Yunge to Jay Irwin re: checking-in
- 2 Easement or Right-of-Way for Access to Property, dated August 14, 2010
- 3 Staff Report, dated November 17, 2010
- 4 Email correspondence to/from Jay Irwin and Sam McDaniel, dated August 5, 2010 re: exemptions
- 5 Letter dated August 18, 2010, from Jim Wiggins to Ms. Del Negro, re: Cedar Cove
- 6 Project Construction and Shoreline Native Plant Restoration Plan, prepared by Aqua-Terr Systems, Inc., August 2010
- 7 Agency Comments: Environmental Health, August 3, 2010; County Geologist, July 28, 2010; County Critical Areas, July 26, 2010
- 8 Certificate of Posting, November 2, 2010
- 9 Legal Notice of Open Record Hearing, November 4, 2010
- 10 Cover Letter with attached Shoreline Conditional Use Permit Application, April 8, 2010
- 11 Revised Site Plans, prepared by HWD, dated April 1, 2010
- 12 Staff Email, dated November 9, 2010 re: scheduling
- 13 Appellant's Brief, submitted by Scot Swanson, dated November 16, 2010

Parties of Record:

Terri Del Negro
Cedar Cove, L.L.C.
PO Box 29183
Bellingham, WA 98229

Scot Swanson
900 Dupont Street
Bellingham, WA 98225

Jay Irwin
Irwin Land Use Consulting, L.L.C.
214 North Commercial Street, Suite 103
Bellingham, WA 98225

Royce Buckingham
Civil Deputy Prosecutor

Tyler Schroeder and Nick Smith
Planning and Development Services

II.

There are no factual issues raised by this Appeal. The facts set forth by Staff in the Staff Report, Exhibit No. 3 in the file, are supported by the record as a whole and are hereby incorporated as Findings of Fact herein by this reference.

The central facts are that the Appellants intend to enlarge an existing single-family residence located at 1120 Lake Whatcom Boulevard by 49.1%. The single-family residence was originally constructed in 1967. There is no on-site parking on the Appellants' property, making it a nonconforming use.

Whatcom County Planning and Development Services determined that the Appellants are required to provide one off-street parking spot as a result of the proposed expansion of the existing residence based on Staff's interpretation of WCC 20.80.505. The property owners appealed and assert that Staff's interpretation of WCC 20.80.505 is in error.

III.

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.

This Appeal raises only a single legal issue regarding the proper interpretation of WCC 20.80.505. Pursuant to WCC 20.80.580 and WCC 20.80.525, two on-site parking spaces are required for a single-family dwelling.

WCC 20.80.505 sets out the general requirements for the provision of parking including how the parking requirements are to be applied to existing buildings or structures and to changes in use. This section reads in its whole as follows:

20.80.505 General Requirements

- (1) No building or structure shall be erected, substantially altered, or its use changed unless permanently maintained off-street parking and loading spaces have been provided in accordance with the provisions of this title.
- (2) The provisions of this section, except where there is a change of use, shall not apply to any existing building or structure. Where the new use involves no additions or enlargements there shall be provided as many of such spaces as may be required by this title.
- (3) Whenever a building or structure constructed after the effective date of this ordinance is changed or enlarged in floor area, number of employees, number of housing units, seating capacity or otherwise to create a need for an increase in the number of existing parking spaces, additional parking spaces shall be provided on the basis of the enlargement or change; provided whenever a building or structure existing prior to the effective date of this ordinance is enlarged to the extent of 50 percent or more in floor area, number of employees, number of housing units, seating capacity or otherwise, said building or structure shall then and thereafter comply with the full parking requirements set forth herein.

In this case, there is no change of use proposed. The provisions of the above section do not apply to an existing building or structure, pursuant to Paragraph (2), above.

However, pursuant to the final clause of Paragraph (3), if a building or structure existing prior to the effective date of the ordinance is enlarged by 50% or more, the building or structure being expanded is required to comply with the full parking requirements of WCC 20.80. Since the use will not change, the building or structure that is being enlarged existed at the time of the adoption of the Parking Ordinance, and the proposed expansion is less than 50% of the floor area, the Appellants are not required to provide any new off-street parking spaces.

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

WCC 20.80.505 exempts the expansion of the Appellants' single-family residence from the Parking Requirements because the proposed expansion is less than 50% of the floor area, the residence was existing prior to the adoption of the Parking Ordinance, and no change in use is proposed. The Appeal is upheld.

NOTICE OF 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 party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the 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.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. 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 7th day of December 2010.

Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
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J.E. "Sam" Ryan
Director

**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT**

November 17, 2010

The application of Cedar Cove, LLC for an Appeal of an Administrative Decision		ADM2010-00021 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPEAL AND RECOMMENDATIONS

Appeal: The appellant, Scott Swanson on behalf of Cedar Cove LLC, is appealing a notice of additional requirements for a Shoreline Conditional Use permit. Specifically, the appellant is appealing a July 7, 2010 staff memorandum stating that one (1) off-street parking spot shall be required for a structural expansion of a nonconforming single family residence (49.1 percent of the existing floor area). The appellant believes that because the expansion is less than 50 percent of the existing floor area, as stated in WCC 20.80.505 (3), that no new off-street parking spots should be required.

Recommendation: Staff contests that WCC 20.80.505 (1) and (3) clearly states that nonconforming structures must become more conforming to WCC 20.80.500 (Off-Street Parking Requirements) if expanded upon; however the extent thereto is based upon the percentage of expansion in floor area. Pursuant to WCC 20.80.505 (1), "no building or structure shall be erected, substantially altered, or its use changed unless permanently maintained off-street parking and loading spaces have been provided," and further WCC 20.80.505 (3) which states that "whenever a building or structure constructed after the effective date of this ordinance is enlarged in floor area, additional parking spaces shall be provided on the basis of the enlargement. Therefore, Whatcom County staff respectfully requests that the Whatcom County Hearing Examiner uphold staff's determination that one (1) on-site parking spot is required for a nonconforming structure that is substantially altered and is enlarged by the extent of 49.1 percent in floor area.

A. BACKGROUND INFORMATION

Appellant:	Scott S. Swanson 900 Dupont Street Bellingham, WA 98225
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Owner:	Terri Del Negro - Cedar Cove, LLC PO Box 29183 Bellingham, WA 98225
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Agent: Jay Irwin
 214 N. Commercial St. #103
 Bellingham, WA 98225

Property Location/Address: 1120 Lake Whatcom Blvd.
 Bellingham, WA 98226

Assessor's Parcel Numbers (APN): 370420 550325

Zoning: Rural (R2A)

Comprehensive Plan: Rural

Subarea: Lake Whatcom

Case Files: SHC2010-00006
 SFR2010-00129

B. PROCEDURAL INFORMATION

Authorizing Ordinances:	WCC 20.92 WCC 20.84.240	Hearing Examiner Appeals
Applicable Whatcom County Codes:	WCC 20.80.500	General Off-Street Parking Requirements

II. FINDINGS AND CONCLUSIONS

Summary:

On April 8, 2010, Jay Irwin on behalf of Terri Del Negro (Cedar Cove LLC), submitted an application for a Shoreline Conditional Use and associated building permit for the expansion of an existing single-family residence at 1120 Lake Whatcom Boulevard. The proposed project includes the demolition and construction of a single-family residence which will expand on the existing floor area by 49.1 percent. On July 7, 2010, staff (Zoning Administrator) commented on the proposed project, stating that one (1) off-street parking spot would be required per the general off-street parking requirements found within WCC 20.80.505. On July 27, 2010, Scot Swanson on behalf Cedar Cove LLC, submitted a letter requesting that staff reconsider their interpretation of WCC 20.80.505.

After review, staff (Shorelines Administrator) issued a letter on August 2, 2010 requesting that the applicant provide additional information. This letter outlined several issues regarding the proposed Native Plant Restoration Plan, the construction staging area, a geological assessment and a

statement that “staff has decided that if the proposal goes forward without an off-street parking spot alternative that the project would need to go before the Whatcom County Hearing Examiner.” On August 11, 2010, Jay Irwin submitted a second request for reconsideration regarding several of the shorelines, geotechnical and zoning (off-street parking) issues. After staff responded back, the applicant filed an appeal on September 17, 2010. The applicant has since revised the appeal to only rebut against the one (1) off-street parking requirement (per a meeting with staff on November 8, 2010).

Timeline of Events:

Date:	Action:
1967	A single-family residence is constructed at 1120 Lake Whatcom Blvd. <i>The Whatcom County Zoning Ordinance is not adopted until 1972.</i>
3/31/92	Gary Arseneault applies for and is granted a shoreline exemption permit for the construction of a 288 square foot boat canopy near/over an existing dock. However, no building permit is ever applied for and the shoreline exemption has been stamped void.
5/20/93	William Bajema, coincidentally the owner of lot 26 and who has applied for a building permit under the address 1120 Lake Whatcom Blvd. (correct address is 1126 Lake Whatcom Blvd.), applies for an encroachment permit for the installation of two (2) parking spaces in conjuncture with his applied for temporary recreation cabin on lot 26. The encroachment permit documentation has since been destroyed; however, the microfilmed building application references Mr. Bajema as meeting his two parking spot requirements per this encroachment permit for lot 26 (see attachments). However, the encroachment permit was submitted under lot 29 and its associated tax parcel number (370420 550325).
5/22/09	Applicant applies for a Shorelines Substantial permit (SHR2009-00003). The application is placed on hold on 7/13/09.
4/8/10	Applicant applies for a building permit and a Shorelines Conditional Use Permit.
7/7/10	Staff comments on the proposed development stating that one off-street parking spot is required per WCC 20.80.505 (1) & (3).
9/17/10	After several correspondence between the applicant and staff (which includes discussion of the 7/27/10 appellant letter), Jay Irwin on behalf of Cedar Cove LLC, files an appeal of staff’s determination to require one (1) off-street parking spot.

Basis for Appeal:

The appellant believes that Whatcom County’s determination of requiring one parking spot is incorrect because the extent of the proposed enlargement is less than 50% in floor area. The appellant contends that since the structure was built in 1967 and the proposed development consists

of less than a 50% (approximately 49.1%) expansion in floor area that no new on-site parking spots should be required per the appellant's interpretation of WCC 20.80.505. WCC 20.80.505 - General Requirements, is as followed:

- (1) No building or structure shall be erected, substantially altered, or its use changed unless permanently maintained off-street parking and loading spaces have been provided in accordance with the provisions of this title.
- (2) The provisions of this section, except where there is a change of use, shall not apply to any existing building or structure. Where the new use involves no additions or enlargements there shall be provided as many of such spaces as may be required by this title.
- (3) Whenever a building or structure constructed after the effective date of this ordinance is changed or enlarged in floor area, number of employees, number of housing units, seating capacity or otherwise to create a need for an increase in the number of existing parking spaces, additional parking spaces shall be provided on the basis of the enlargement or change; provided whenever a building or structure existing prior to the effective date of this ordinance is enlarged to the extent of 50 percent or more in floor area, number of employees, number of housing units, seating capacity or otherwise, said building or structure shall then and thereafter comply with the full parking requirements set forth herein.

The appellant contends that section 1 of the above ordinance is simply the general rule regarding the effective date of the ordinance (Title 20), whereas paragraph 3 describes the parking requirements for nonconforming structures. The appellant states that the "operative language in paragraph 3 is whenever a building or structure existing prior to effective date of the ordinance is enlarged to the extent of 50% or more in floor area... said building or structure shall then thereafter comply with the full parking requirements set forth herein. The converse of this is that because the project is below 50% enlargement of floor area, the parking requirements at the time the home was constructed remain."

The appellant also contends that Whatcom County has already approved his client's two parking spaces on the county right-of-way (Lake Whatcom Boulevard) per a 1993 revocable encroachment permit. As stated: "currently, Whatcom County has made an internal informal opinion that one (1) off street parking space is required as part of the remodel. Presumably, this means that Whatcom County is recognizing the parking spot across Lake Whatcom Boulevard."

Basis of Decision:

Currently, the existing single-family residence does not conform to WCC 20.80.510, 20.80.525 (1) and 20.80.580 (50) which requires the owner to demonstrate two (2) 10' x 20' off-street, on-site parking areas. Specifically, WCC 20.80.525 (1) states that "parking spaces for all one and two-family dwellings shall be located on the same lot as the dwelling which they are intended to serve." As such, the 1993 revocable encroachment permit can not be fully used to satisfy the on-site parking requirement as stated within WCC 20.80.525. Nevertheless, Whatcom County staff finds that the whole context of WCC 20.80.505 (1) and (3) must be used in order to correctly interpret the amount of off-street and on-site parking.

WCC 20.80.505 (1) states that “no building or structure shall be erected, substantially altered, or its use changed unless permanently maintained off-street parking and loading spaces have been provided in accordance with the provisions of this ordinance.” Staff believes that a 49.1 percent expansion in floor area is a substantial alteration and thus subject to the parking requirements stated within the current ordinance. Unfortunately, the ordinance does not define a “substantial alteration,” but staff believes that a 49.1 percent expansion in floor is, by no means a nominal alteration. The appellant however believes that WCC 20.80.505 (1) is simply the “general rule regarding to when the ordinance becomes effective.” Staff contests that WCC 20.80.505 (1) is rather one of three thresholds to determine when new and/or additional parking shall be added and as such is the first determinate that the development must conform to the off-street parking requirements.

Nevertheless, the extent thereto to conform to the off-street parking requirements is determined by WCC 20.80.505 (3). WCC 20.80.505 (3) is broken down into two statements; “whenever a building or structure constructed after the effective date of this ordinance is changed or enlarged in floor area, number of employees, number of housing units, seating capacity or otherwise to create a need for an increase in the number of existing parking spaces, additional parking spaces shall be provided on the basis of the enlargement or change... As such, the first section of WCC 20.80.505 (3) clearly states that the amount of new off street parking spots should be added based upon on the percentage of expansion. Since the existing single-family dwelling currently demonstrates zero (0) on-site parking spots, the applicant must provide 49.1 percent or one (1) on-site parking spot of the required two (2).

Staff contests that the second half of WCC 20.80.505 (3) is clearly written to state that structures expanded over 50 percent in existing floor area must meet all of the said parking requirements, instead of off the basis or percentage of enlargement. Pursuant to the second section of WCC 20.80.505 (3), “provided whenever a building or structure existing prior to the effective date of this ordinance is enlarged to the extent of 50 percent or more in floor area, number of employees, number of housing units, seating capacity or otherwise, said building or structure shall then and thereafter comply with the full parking requirements set forth herein.” Clearly, any expansion over 50 percent is no longer based on the percentage of enlargement but rather on the basis that all of the (full) off-street parking standards are met.

Staff further contests that if it was the intent of the ordinance to not require any new on-site parking spots for expansions of less than 50 percent in floor area then the ordinance would have emitted WCC 20.80.505 (1), the first section of WCC 20.80.505 (3) and the statement “need not to comply with the full parking requirements” within the second half of WCC 20.80.505 (3). Clearly, the word “full” implies that one must meet all of the standards; however, it does not imply that none of the parking standards have to be met for expansions below 50 percent in floor area, as is the argument of the appellant. In fact, if it was the intent of the ordinance not to require any of the standards up to 50 percent in floor area to be met then the ordinance would have emitted the first section of WCC 20.80.505 (3).

Furthermore, staff also believes that it is the intent of the zoning ordinance to promote and maintain the public’s health and safety. As such WCC 20.04.030, Interpretation and Conflict, states that “in interpreting and applying the provisions of this title, they shall be held to be the minimum

requirements for the promotion of public health, safety, convenience, order, morals and general welfare.” For this, staff contests that one (1) off-street, on-site parking spot will reduce the amount of pedestrian traffic from traveling over Lake Whatcom Boulevard which will further reduce the possibilities of vehicular and pedestrian accidents on this busy thoroughfare.

II. DETERMINATION

Based on the above findings, staff respectfully requests that the Whatcom County Hearing Examiner uphold staff’s determination that one (1) on site parking spot is required for a nonconforming structure that is substantially altered and is enlarged by the extent of 49.1 percent in floor area.

Report prepared by:

Nick Smith
Planner