

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance) VAR2009-0002
Application for)
Dan and Barbara Sanford) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Variance to reduce the front-yard setbacks from 20-feet to 0-feet to accommodate replacement of a single-family residence.

Decision: The requested Zoning Variance is approved 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.

Applicant: Dan and Barbara Sanford

Applicant's Representative Sam Crawford – Emerald Lake Consulting

Property Location: 7461 Birch Bay Drive
Blaine, Washington

Legal Description: Lot 5, Block 3, Plat of Birch Bay Park, located in the NE ¼
of Section 36, Township 40 North, Range 1 West, W.M.

Zoning: URM6 (Urban Residential Medium Density 6 Units/Acre)

Comprehensive Plan: UGA (Urban Growth Area)

Subarea: Birch Bay – Blaine

Authorizing Ordinances:

- Whatcom County Comprehensive Land Use Plan
- Whatcom County Code Chapter 15, Building Code
- State Environmental Policy Act (SEPA), Washington Administrative Code Chapter 197-11
- Whatcom County Code Chapter 16.16, Critical Areas
- Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
- Whatcom County Code Title 24, Health Regulations

SEPA Review: The proposal is categorically exempt from the State Environmental Policy Act per WAC 197-11-800(1)(b)(i), and WAC 197-11-800 (6) (b).

Legal Notices: Posted – April 17, 2010
 Mailed – April 16, 2010
 Published – September 3 and April 22, 2010

Hearing Date: May 5, 2010

Parties of Record:

Dan and Barbara Sanford
 PO Box 544
 Lynden, WA 98264

Sam Crawford
 Emerald Lake Consulting
 1627 Diamond Loop
 Bellingham, WA 98226

Sanja Barisic
 Division of Engineering

Brenda Wilson
 Whatcom County Planning and Development Services

Exhibits:

1 Land Use Application

- 1-1 Supplemental Application
 - 1-2 Agent Authorization
 - 1-3 Customer Receipt
 - 1-4 Statutory Warranty Deed
 - 1-5 Determination of Completeness, dated August 31, 2009
 - 1-6 Form memo to Tech Committee, dated Sept 3, 2009
 - 1-7 Form Notice of Application to Property Owners, dated Sept 3, 2009
 - 1-8 PDS Instructions
 - 1-9 Property Owners Addresses – 300-ft
 - 1-10 Property Owners Mailing Labels
 - 1-11 Preliminary Stormwater Proposal
 - 1-12 Preliminary Traffic and Concurrency Info
 - 1-13 Health Dept Availability Notification for Public Water/Sewer
 - 1-14 Staff email correspondence
-
- 2 Staff Report, dated April 23, 2010
 - 3 Agency Comments
 - 4 Aerial Map
 - 5 Vicinity Map
 - 6 Plat Map
 - 7 Zoning Map
 - 8 Legal Description
 - 9 Site Plan
 - 10 Legal Notice of Application, dated September 3, 2009
 - 11 Certificate of Mailing of Public Hearing, dated April 16, 2010
 - 12 Certificate of Posting of Public Hearing, dated April 17, 2010
 - 13 Legal Notice Affidavit of Public Hearing, dated April 22, 2010

II.

The Land Use Services Division of Whatcom County Planning and Development Services, in a Staff Report, dated April 23, 2010, recommended approval of this proposal subject to conditions. The

Findings of Fact and Conclusions of Law that the Staff set forth in the Staff Report, Exhibit #2, a copy of which is attached hereto, are incorporated herein by this reference. The Applicant has indicated that there are no factual inaccuracies in Staff's factual findings. There are no contested facts in this matter. There was no public testimony on the matter at the public hearing. The Applicant has indicated no objection to the Conditions of Approval requested by Staff. The Findings of Fact in the Staff Report are hereby adopted by the Hearing Examiner as the Findings of Fact herein.

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.

The requested reduction in the front yard setback can be granted only if the request is consistent with the Zoning Variance Criteria of WCC 20.84.120 (1 through 3). Subject to Conditions of Approval, this Variance will be consistent with the applicable Variance Criteria. The requested Variance should be granted subject to conditions.

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

Dan and Barbara Sanford are hereby granted a Zoning Variance to reduce the front-yard setback from 20-feet to 0-feet in order to replace an existing single-family residence located on Assessor's Parcel No. 405136 576232, 7461 Birch Bay Drive, Blaine, Washington, subject to the following conditions:

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. The project shall comply with all applicable Whatcom County Development Standards as well as all applicable Federal, State, and local laws and regulations.
3. The Applicant shall comply with conditions set forth in the memorandum from the Whatcom County Plans Examiner, dated September 17, 2009, unless modified by the Plans Examiner or appealed to the appropriate agency.

4. The Applicant shall procure all necessary permits prior to any on site work. If the existing modular home is to be placed on a parcel of land in Whatcom County, a building permit and a move permit will be required for such placement.
5. The Applicant shall comply with the conditions set forth in the memorandum from the Whatcom County Public Works Department, dated January 25, 2010; unless modified by Public Works or appealed to the appropriate agency.
6. The Applicant shall provide an Endangered Species Act Checklist at the time of the Building Permit Application.
7. The Applicant shall comply with the requirements of the River and Flood Division, memorandum [email], dated September 21, 2009, unless modified by the River and Flood Administrator, or appealed to the appropriate agency.
8. The Applicant shall obtain the Shoreline Exemption, SHX2009-00137, prior to application for a Building Permit.
9. The Applicant shall comply with the requirements of the Critical Areas Administrator, set forth in the memorandum, dated September 3, 2009, prior to application for a Building Permit, unless modified by the Critical Areas Administrator or appealed to the prior agency.
10. Regarding cultural resources, the following inadvertent discovery language condition shall be adhered to:

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 (676-6907) LNTHPO (384-2298) 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 LNTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

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 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 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 May 2010.

Michael Bobbink, Hearing Examiner



April 23, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of Dan and Barbara Sanford For a Zoning Variance Permit		VAR2009-00002 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
--	--	---

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant requests approval of a Zoning Variance to reduce the front yard setback from 20 feet to zero feet to replace an existing residence.

Recommendation: Staff recommends approval of the requested Zoning Variance permit subject to the conditions outlined in this report.

II. BACKGROUND

Applicant: Dan and Barbara Sanford

Applicant's Representative Sam Crawford – Emerald lake Consulting

Property Location: 7461 Birch Bay Drive
Blaine, WA.

Legal Description: Lot 5, Block 3, Plat of Birch Bay Park, located in the NE1/4 of Section 36, Township 40 North, Range 1 West, W.M.

Zoning: URM6 (Urban Residential Medium Density 6 Units/Acre)

Comprehensive Plan: UGA (Urban Growth Area)

Subarea: Birch Bay – Blaine

Authorizing Ordinances:

1. Whatcom County Comprehensive Land Use Plan.
2. Whatcom County Code Chapter 15, Building Code
3. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
4. Whatcom County Code Chapter 16.16, Critical Areas
5. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code Title 24, Health Regulations

SEPA REVIEW: The proposal is categorically exempt from the State Environmental Policy Act per WAC 197-11-800(1)(b)(i). And WAC 197-11-800 (6) (b).

III. ZONING REVIEW, FINDINGS AND CONCLUSIONS

Site Description

The subject property is located at 7461 Birch Bay Drive. The property is currently developed with an existing single-family residence. The lot contains 4,796 square feet and is relatively flat and is located with the Urban Resort Shoreline Designation.

The applicant proposes to replace the existing single family residence. The new residence is proposed to be located zero feet from the front property line, fourteen feet from the southwesterly side property line, five feet from the northeasterly side property line, approximately thirty one feet from the rear property line and approximately fifty feet from the Ordinary High Water Mark of Birch Bay.

Variance Review

Applicable Policies and Regulations

In order for a variance to be approved it must satisfy the criteria of WCC 20.84.100 (.120) 1 through 3. 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.

Analysis of criteria

1) A zoning variance is requested in order to:

Reduce the front yard setback from the 20 feet required under WCC20.80.230(2) (Measurement of setbacks – Shoreline Areas) to 0 feet.

2) The variance is needed to accommodate the placement /construction of:

A single family residence.

3) Describe the circumstances that apply to your property, such as size, shape, topography, location or surroundings, which make it difficult or impossible to meet the standard requirements of the ordinance.

The size and location of the subject parcel make it difficult if not impossible to meet the front yard setback requirement. The subject parcel (Lot 5, Block 3 of the Plat of Birch Bay Park) is a small lot (4,796 sq. ft.) and is adjacent to the Birch Bay shoreline. In addition, Birch Bay Drive was not constructed within the area of the platted and dedicated right of way. The actual approximate distance from the closest point of the proposed residence to the constructed edge of pavement of the right of way is fifteen feet. Therefore, the proposed location of the residence will not visually appear to be zero feet from the front property line because the front property line does not align with the constructed road right of way. Also, the existing fence aligns with the constructed road right of way which will provide a visual setback via a landscaped front yard. (See attached letter from Joe Rutan, P.E., Assistant Director/County Road Engineer: # 2 under “Background”)

4) Are such circumstances common to other properties in the area?

Yes, all of the platted lots within Block 3 of the Plat of Birch Bay Park are similar in size and are adjacent to the Birch Bay Shoreline. In many instances existing residences are closer to the shoreline than the proposed location of this residence and fences along other front property lines in the area are also aligned with the constructed road right of way which was not constructed within the platted, dedicated right of way.

5) Describe how a strict application of the ordinance causes a hardship and deprives your property of rights and privileges enjoyed by other properties in the vicinity and within the same zoning classification.

The required front yard setback pursuant to WCC20.80.230(2) is 20 feet. The required setback from the shoreline in the Urban Resort Shoreline Designation is

150'. However, Section 23.50.07.K of the Whatcom County Shoreline Management Program provides for new residential development on non-conforming shoreline lots. Section 23.50.07.K.2 states that the proposed building area shall not exceed 2,500 square feet when the proposed development is located as far as feasible from the shoreline.

Strict application of the zoning ordinance of a required 20' setback from the front property line would cause a hardship due to the fact it would deprive this property the right and privilege to enjoy the most available open area between the proposed location of the residence and the shoreline. The proposed building site most effectively utilizes the nonconforming lot while protecting the shoreline with the maximum practical setback. A review of aerial photographs and a site visit to the site and surrounding area indicate that several residences are constructed within the required setback due to the fact the road was not constructed within the platted and dedicated right of way. Therefore, other properties enjoy the privilege of reduced front property line setbacks.

6) Would granting of the requested variance be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity?

No, the replacement of this single family residence would be beneficial rather than detrimental to the public welfare because the proposed location minimizes impact to the shoreline environment. In addition, in the attached memo from Joe Rutan, P.E., Assistant Director/County Road Engineer dated June 25, 2008 he states: "At a recent meeting with Dan Gibson, county prosecuting attorney civil deputy and Jim Perkins, Public Works real estate manager, we concluded that the public interest, subject to Planning & Development Services approval, might be best served by granting the Sanford's a variance rather than vacating a portion of right-of-way."

7) Is the variance proposal arbitrary, based on convenience, a self-imposed hardship or financial consideration?

Staff has no reason to believe that this variance has been requested for financial reasons alone, or by any previous actions of the property owners.

IV. PUBLIC AND AGENCY COMMENTS

Public Comment

No public comment was received during the review of this project proposal.

Public Works

The Whatcom County Public Works Department provided a memo dated January 25, 2010 which is incorporated into the conditions section of this report.

Health Department

The Whatcom County Health Department provided a memo dated October 22, 2009

indicating that they have no comments on the proposed project.

Critical Areas Ordinance

A memo was provided on September 3, 2009 by the Technical Administrator of the Critical Areas Ordinance stating that a vegetation management plan will be required. Also an Assignment of Savings to insure installation and monitoring of the vegetation management plan for a minimum of 5 years will be required. In addition, the plantings must be permanently protected by one of the following mechanisms:

1. Covered by a protective easement or public or private land trust dedication (Conservation Easement); or
2. Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as a Conservation Easement.

Shoreline Management

A memo was provided on September 18, 2009 by Sam McDaniel, Shoreline Administrator recommending that the applicant seek approval of a Shoreline Statement of Exemption prior to application of a building permit. The applicant has applied for the exemption, reference SHX2009-00137.

River and Flood Division

An email from Travis E. Bouma dated September 21, 2009 stating the project is subject to the Whatcom County Flood Code (Title 17). See attached email.

Fire Marshal's Office

The Whatcom County Fire Marshal's Office provided a memo dated September 14, 2009. The Fire Marshal's Office had no comments or conditions for the setback variance. See attached email.

Building Services

The Whatcom County Plans Examiner provided a memo dated September 17, 2009 which is incorporated into the conditions section of this report.

V. CONCLUSIONS AND RECOMMENDATION

Based on the above findings and technical review, Staff recommends approval of the requested Zoning Variance permit, subject to the following conditions.

VI. CONDITIONS OF APPROVAL

1. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. The project shall comply with all applicable Whatcom County Development Standards as well as all applicable federal state, and local laws and regulations.
3. The applicant shall comply with conditions set forth in the memo from the Whatcom County Plans Examiner dated September 17, 2009 unless modified by the Plans Examiner or appealed to the appropriate agency.
4. The applicant shall procure all necessary permits prior to any on site work. If the existing modular home is to be placed on a parcel of land in Whatcom County, then a building permit and a move permit will be required for such placement.
5. The applicant shall comply with the conditions set forth in the memo from the Whatcom County Public Works Department dated January 25, 2010; unless modified by the Public Works Department or appealed to the appropriate agency.
6. The applicant shall provide an Endangered Species Act checklist at the time of building permit application.
7. The applicant shall comply with the requirements set forth in the attached email from Travis E. Bouma; Engineering Tech. Whatcom County Public Works River & Flood Division dated September 21, 2009 unless modified by the Public Works Department or appealed to the appropriate agency.
8. The applicant shall obtain the shoreline exemption applied for under SHX2009-00137 prior to application of a building permit.
9. The applicant shall comply with the requirements set forth in the attached Critical Area Review Memo from Lyn Morgan-Hill dated September 3, 2009 at the time of building permit application.

10. Regarding cultural resources, the following inadvertent discovery language condition shall be adhered to:

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 (676-6907) LNTHPO (384-2298) 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 LNTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

Report prepared in coordination with the Technical Review Committee by:

Brenda Wilson
Senior Planner