

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance) VAR2009-0001
Application for)
Pat Jerns) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Variance to reduce the side-yard setbacks from 5-feet to 0-feet to accommodate the construction of a single-family residence, replacing an existing non-conforming one story single-family residence with a two story single family residence and a one story deck. The new residence is proposed to be located in the same footprint as the existing nonconforming structure and the requested Zoning Variance is to accommodate the second story projection into the side yard setbacks.

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: Pat Jerns

Property Location: 5097 Fern Street
Birch Bay, WA

Legal Description: E ½ of Lot 17, Block 7 of the Plat of Cottonwood Beach Park;
located in the SE ¼ of Section 24, Township 40N, Range I W, W.M.
APN 405124 305176

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

Comprehensive Plan: UGA (Urban Growth Area) (Short Term Planning Area)

Subarea: Birch Bay – Blaine

<u>Authorizing Ordinances:</u>	WCC 20.84.100	Variances
	WCC 20.92	Hearing Examiner
	WCC 20.83	Nonconforming Uses and Parcels

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 – June 24, 2009
Mailed – June 18, 2009
Published – April 30 and June 25, 2009

Hearing Date: July 8, 2009

Parties of Record:

Pat Jerns
22813 North Cherokee Lane
Sun City West, AZ 85375

JWR Design
Attn: Heidi
104 Front Street
Lynden, WA 98264

Brenda Wilson and Warner Webb
Whatcom County Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Preliminary Traffic Information
 - 1-3 Preliminary Stormwater Proposal

- 1-4 Customer Receipt, dated April 8, 2009
 - 1-5 Determination of Completeness, dated April 22, 2009
 - 1-6 Technical Review Committee form letter
 - 1-7 Property Owner form letter
 - 1-8 Deed History
 - 1-9 County Policies and Procedures: Second Story Additions/Variances
 - 1-10 Birch Bay Water & Sewer District, Statement dated Feb 13, 2009
 - 1-11 Revocable Encroachment Permit Application
-
- 2 Aerial Photo
 - 3 Plat Map
 - 4 Zoning Map
 - 5 Site Plans
 - 6 Legal Notice of Application, dated April 30, 2009
 - 7 Certificate of Mailing, dated June 18, 2009
 - 8 Legal Notice of Hearing, dated June 25, 2009
 - 9 Property Owners List
 - 10 Neighboring Property Owner Comment, date PDS received, May 5, 2009
 - 11 Staff Report, dated June 30, 2009 with Agency Comments attached
 - 12 Posting Notice, dated June 24, 2009

II.

The Land Use Services Division of Whatcom County Planning and Development Services, in a Staff Report, dated June 30, 2009, 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 #11, 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 side yard setbacks 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

Pat Jerns is hereby granted a Zoning Variance to reduce the side-yard setbacks from 5-feet to 0-feet in order to construct a single-family residence located on Assessor's Parcel No. 405124 305176, 5097 Fern Street, Birch Bay, 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 May 1, 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. A Demolition Permit shall be obtained from Whatcom County Planning & Development Services Building Services Division prior to removal of the existing structure on the property. A complete set of building plans and elevations shall be submitted of all proposed construction. All required permits shall be obtained prior to construction of the new residence. The proposed height shall be depicted on the structural plans and shall not exceed the building height limit of 35-feet per Whatcom County Code 20.20.400 height regulations and the building height shall be measured

as defined in Whatcom County Code 20.97.040.

5. The Applicant shall comply with the conditions set forth in the memorandum from the Whatcom County Fire Marshal's Office, dated May 6, 2009; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
6. The Applicant shall comply with the conditions set forth in the memorandum from the Whatcom County Public Works Department, dated May 7, 2009; unless modified by the Public Works Department or appealed to the appropriate agency.
7. Disposal of construction and demolition debris shall be completed in accordance with the requirements of Whatcom County Planning and Development Services, the Northwest Air Pollution Authority (NWAPA), and the Washington State Department of Ecology.
8. 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 13th day of July 2009.

Michael Bobbink, Hearing Examiner



June 30, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of Pat Jerns For a Zoning Variance Permit		VAR2008-00002 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
--	--	---

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant requests approval of a Zoning Variance permit to reduce both side setbacks from five feet to zero feet to replace an existing non-conforming one story single-family residence with a two story single family residence and a one story deck. The new residence is proposed to be located in the same footprint as the existing non-conforming structure and the variance request is for the second story projection into the side yard setbacks.

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

II. BACKGROUND

Applicant: Pat Jerns

Property Location: 5097 Fern Street

Legal Description: E1/2 of Lot 17, Block 7 of the Plat of Cottonwood Beach Park; located in the: SE1/4 of Section 24, Township 40N, Range I W., W.M. APN#405124305176

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

Comprehensive Plan: UGA (Urban Growth Area) (Short Term Planning Area)

Subarea: Birch Bay – Blaine

Authorizing Ordinances: WCC 20.84.100 Variances
WCC 20.92 Hearing Examiner
WCC 20.83 Nonconforming Uses and Parcels

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 5097 Fern Street. The property is currently developed with an existing single-family residence located zero feet from the east and west property lines and approximately 45 feet from the North and South property lines.

The applicant proposes to build a new single-family residence in place of the existing residence. The new residence will be located zero feet from the east and west property lines and approximately 45' from the north and south property lines.

Building height in the URM6 (Urban Residential Medium Density 6 Units/Acre) zone is limited to 35-feet per WCC 20.20.400.

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 side yard setbacks from the standard 5 feet to 0 feet.

2) The variance is needed to accommodate the 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 shape of the subject parcel make it difficult if not impossible to meet the side yard setback requirements. The property is long and narrow and approximately 20 feet in width. If the 5 foot side yard setbacks are required then the maximum width of the residence could be only 10 feet.

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

Yes, there is a prevalence of small, narrow lots in this area.

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.

A maximum of 10 feet for the width of a house causes a hardship and deprives the property owner of the property right to construct a residence of reasonable width which is a property right enjoyed by other property owners in the area. The narrow shape and small size of the lot which is .06 acres and less than 2650 square feet does not allow for a modestly sized or reasonably wide single family residence to be built within the strict application of side yard setback requirements. The proposed two story residence is only approximately 1,120 square feet. The second story of the residence is essential in order to have even a less than modestly sized house. The location of residences on wider and larger lots within this zoning classification can usually meet the setback requirements unless there are other topographical constraints.

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 due to the imposition of current building and fire code requirements. The Whatcom County Fire Marshall's office has imposed strict construction requirements which are a significant improvement over the construction methods utilized in the current house.

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. The property owner is proposing to demolish an existing nonconforming one story single family residence and replace it in the same footprint with a two story single family residence.

IV. PUBLIC AND AGENCY COMMENTS

Public Comment

Public comment was received during the review of this project proposal.

One comment stated that the new house construction will be a “terrific improvement” to the Fern Street neighborhood.

Additional comments regarded fire safety concerns due to the proximity of the proposed residence location in relation to the location of adjacent residences.

Staff comment

The Fire Marshal’s Office has conditioned the construction of the new residence with conditions that will mitigate the fire safety concerns.

Public Works

The Whatcom County Public Works Department provided a memo dated May 7, 2009 which is incorporated into the conditions section of this report.

Health Department

The Whatcom County Health Department provided a memo dated May 12, 2009 indicating that they have no comments on the proposed project.

Critical Areas Ordinance

A memo was provided on May 6, 2009 by the Technical Administrator of the Critical Areas Ordinance stating that based on a review of the proposal, critical areas staff have determined that there will be no wetland or habitat conservation area impacts as a result of this proposal. See attached memo.

Fire Marshal’s Office

The Whatcom County Fire Marshal’s Office provided a memo dated May 6, 2009 which is incorporated into the conditions section of this report.

Building Services

The Whatcom County Plans Examiner provided a memo dated May 1, 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 May 1, 2009 unless modified by the Plans Examiner or appealed to the appropriate governing body.
4. The applicant shall procure all necessary permits prior to any on site work. A Demolition Permit shall be obtained from Whatcom County Planning & Development Services Building Services Division prior to removal of the existing structure on the property, a complete set of building plans and elevations shall be submitted of all proposed construction, and all required permits shall be obtained prior to construction of the new residence. The proposed height shall be depicted on the structural plans and shall not exceed the building height limit of 35' per Whatcom County Code 20.20.400 height regulations and the building height shall be measured as defined in Whatcom County Code 20.97.040.
5. The applicant shall comply with the conditions set forth in the memo from the Whatcom County Fire Marshal's Office dated May 6, 2009; unless modified by the Fire Marshal's Office or appealed to the appropriate governing body.
6. The applicant shall comply with the conditions set forth in the memo from the Whatcom County Public Works Department dated May 7, 2009; unless modified by the Public Works Department or appealed to the appropriate governing body.
7. Disposal of construction and demolition debris shall be completed in accordance with the requirements of Whatcom County PDS, the Northwest Air Pollution Authority (NWAPA), and DOE.
8. 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