

**WHATCOM COUNTY HEARING EXAMINER**

|   |                     |
|---|---------------------|
| RE: SHORELINE SUBSTANTIAL DEVELOPMENT ) | SHR2008-0010        |
| ZONING VARIANCE )                       | VAR2008-0003        |
| Application for )                       |                     |
| )                                       |                     |
| <i>Brett Nichols</i> )                  | FINDINGS OF FACT,   |
| )                                       | CONCLUSIONS OF LAW, |
| )                                       | AND DECISION        |

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant requests a Shoreline Substantial Development Permit and Zoning Variance for construction of a single-family residence and associated appurtenant development. The Zoning Variance is requested in order to reduce the required 30-foot front-yard zoning setback to 12-feet to accommodate construction of the single-family residence. The Shoreline Permit is required in order to provide greater than 250 cubic yards of grading within the jurisdiction of the Whatcom County Shoreline Management Program.

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: Brett Nichols

Property Location: 2653 Strawberry Shores Drive – Bellingham, WA

Legal Description: Geneva Amended  
Lots 26,27,28 Block 20  
Section 35, Township 38N, Range 03E, W.M.  
Assessor’s Parcel No. 380335-552223

Adjacent Water Body: Lake Whatcom

Shoreline Designation: Urban

Zoning: Rural (R5A)

Comprehensive Plan: Rural

Subarea: Lake Whatcom Subarea

|                                |               |                  |
|--------------------------------|---------------|------------------|
| <u>Authorizing Ordinances:</u> | SMP 23.70.40  | Hearing Examiner |
|                                | SMP 23.50     | Applicability    |
|                                | WCC 20.84.100 | Variances        |
|                                | WCC 20.92     | Hearing Examiner |

|   |                                  |
|---|----------------------------------|
| <u>Applicable Shoreline Program Provisions:</u> |                                  |
| SMP 23.20                                       | Goals and Objectives             |
| SMP 23.30.41                                    | Urban Shoreline Area             |
| SMP 23.60.170                                   | Substantial Development Criteria |
| SMP 23.90                                       | General Policies & Regulations   |
| SMP 23.100.70                                   | Landfill & Excavation            |
| SMP 23.100.130                                  | Residential                      |

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

Legal Notices: Published – April 23, 2009  
Posted – April 23, 2009  
Mailed – April 17, 2009

Hearing Date: May 6, 2009

Parties of Record:

Dave Nichols on behalf of Brett Nichols  
3467 Sheridan Trail  
Bellingham, WA 98226

Brenda Wilson and Sam McDaniel  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Letter of Complete Application, dated May 5, 2008
  - 1-3 Distribution List
  - 1-4 Property Owner Mailing Labels
  - 1-5 Land Disturbance Application
  - 1-6 Preliminary Stormwater Proposal
  - 1-7 Preliminary Traffic Information
- 2 Geotechnical Reconnaissance/Investigation, dated November 19, 2007, by Western Geotechnical Consultants
- 3 Site Plans
- 4 Aerial Map
- 5 Vicinity Map
- 6 Zoning Map
- 7 Herald Notice
- 8 Certificate of Mailing, dated April 17, 2009
- 9 Legal Notice, dated April 23, 2009
- 10 Deed
- 11 Staff Report, dated May 4, 2009, with Agency Comments attached
- 12 Letters, dated May 8 and August 7, 2008, February 22, 2005, and December 18, 2004, from Max Hurlbut objection to proposed development
- 13 Letter dated March 9, 2005, from Steven Shropshire with Letter, dated June 5, 2000 from Ron Reimer and photos attached
- 14 Representative Authorization, dated May 5, 2009
- 15 Posting Notice, dated April 23, 2009
- 16 Email dated May 6, 2009 from Doug Goldthorp to Hearing Examiner re: Correction to the Record

## **II.**

The Applicant is requesting a Shoreline Substantial Development Permit and a Zoning Variance in order to accommodate construction of a single-family residence and associated appurtenants. The project will require a reduction in the front-yard zoning setback to 12-feet and greater than 250-cubic yards of grading within the jurisdiction of the Whatcom County Shoreline Management Program.

## **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 of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit #11, dated May 4, 2009, 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.**

Whatcom County Shoreline and Zoning Planners have recommended approval of the requested Shoreline Substantial Development Permit and Zoning Variance for the proposed construction of a single-family residence located on Lake Whatcom in Whatcom County, Washington.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #11, dated May 4, 2009. 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 and complies with the Zoning Variance Criteria of WCC 20.84.120 (1through 3). 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 and Zoning Variance are hereby granted to Brett Nichols for the construction of a single-family residence and associated appurtenant development, granting the reduction of the front-yard zoning setback to 12-feet and allowing greater than 250-cubic yards of grading within the jurisdiction of the Shoreline Management Program. The property in question is located at 2653 Strawberry Shores Drive, Bellingham, Washington. The permits are granted subject to the following conditions:

1. The proposed project shall conform to the design, configuration, size and location that has been approved except as modified by this approval. Any alteration of the approved design shall require additional review by the Whatcom County Hearing Examiner.
2. The project shall comply with all applicable Federal, State, and local laws and regulations.
3. The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.
4. Exposed soils exceeding 500-square feet shall not be permitted from September 1<sup>st</sup> through April 30<sup>th</sup>.
5. During the off-season (October 1<sup>st</sup> to May 1<sup>st</sup>) all exposed soils shall be mulched per Whatcom County Standards and maintained through the off-season or until seeding or other stabilization methods are effective. In Water Resources Special Management Areas, exposed soils shall be mulched throughout the year.
6. 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 LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
7. Excavated materials not utilized for foundation backfill, shall be disposed of in an approved fill site and shall not be placed in any wetland or critical area without express written approval from the Whatcom County Critical Areas Specialist and all other jurisdictional agencies.
8. The Applicant shall comply with all of the requirements of the Whatcom County Watershed Office, as outlined in the May 22, 2008 memorandum, unless modified by

Whatcom County Planning and Development Services or appealed to the appropriate agency.

9. The Applicant shall comply with all of the requirements of the Whatcom County Geologist, as outlined in the May 22, 2008 comments, unless modified by the Geologist or appealed to the appropriate agency.
10. The Applicant shall comply with all of the requirements of the Whatcom County Public Works Department, as outlined in the July 2, 2008 comments, unless modified by the Public Works Department or appealed to the appropriate agency.
11. The Applicant shall comply with all of the requirements of the Whatcom County Planning and Development Services, Building Division, as outlined in the May 28, 2008 comments, unless modified by the Whatcom County Building Administrator, or appealed to the appropriate agency.
12. Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate the approved development. Surfaces cleared of vegetation should be immediately re-vegetated with native or compatible plants.
13. State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
14. Construction shall commence within two years of the effective date of the Shoreline Substantial Development 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. Permit authorization shall terminate five years after the effective date of the Shoreline Substantial Development 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 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 12<sup>th</sup> day of May 2009.

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Michael Bobbink, Hearing Examiner



May 4, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

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|--|--|---|
| The application of<br><b>Brett Nichols</b><br>for a Zoning Variance Permit and<br>a Shoreline Substantial Development Permit |  | VAR2008-00003 and<br>SHR2008-00010<br>FINDINGS, CONCLUSIONS, AND<br>RECOMMENDATIONS |
|--|--|---|

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests approval of a Zoning Variance permit and a Shoreline Substantial Development permit for construction of a single family residence and associated developments. The applicant is requesting reduction of the required 30-foot front-yard zoning setback to 12-feet to accommodate the construction of a single-family residence and associated appurtenant development. Additionally, the project will require greater than 250 cubic yards of grading within the jurisdiction of the Whatcom County Shoreline Management Program.

Recommendation: Staff recommends approval of the requested Zoning Variance permit and the Shoreline Substantial Development permit subject to the conditions of approval.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Mr. Brett Nichols

Property Location: 2653 Strawberry Shores Drive – Bellingham, WA

Legal Description: Geneva Amended  
Lots 26,27,28 Block 20  
Section 35, Township 38N, Range 03E, W.M.  
Parcel: 380335-552223

Adjacent Water Body: Lake Whatcom  
 Shoreline Designation: Urban  
 Zoning: Rural (R/5)  
 Comprehensive Plan: Rural  
 Subarea: Lake Whatcom Subarea

**B. PROCEDURAL INFORMATION**

Authorizing Ordinances: SMP 23.70.40 Hearing Examiner  
 SMP 23.50 Applicability  
 WCC 20.84.100 Variances  
 WCC 20.92 Hearing Examiner

Applicable Shoreline Program Provisions:

SMP 23.20 Goals and Objectives  
 SMP 23.30.41 Urban Shoreline Area  
 SMP 23.60.170 Substantial Development Criteria  
 SMP 23.90 General Policies & Regulations  
 SMP 23.100.70 Landfill & Excavation  
 SMP 23.100.130 Residential

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

**I. FINDINGS AND CONCLUSIONS**

The applicant is requesting a Zoning Variance permit and a Shoreline Substantial Development permit to reduce the front-yard setback from 30-ft. to 12-ft.

Additionally, the construction of the new single family residence will require approximately 435 cubic yards of fill and grade within the jurisdiction of the Whatcom County Shoreline Management Program.

The subject property is located at 2653 Strawberry Shores Drive along the north-western edge of Lake Whatcom. The property is composed of three narrow lots that slope steeply to the north towards Lake Whatcom Boulevard. The slope varies from approximately 30%-80% and slopes towards Lake Whatcom Boulevard. The property is vegetated with well established second growth Douglas Fir and Western Red Cedar with an understory of predominantly low bush vegetation.

According to the Whatcom County Zoning Map, the subject site is zoned Rural (R/5). Chapter 20.36.051 states that one single-family dwelling unit per lot is permitted in the Rural zoning designation. Pursuant to the Whatcom County Shoreline Management Program, the subject property is designated an Urban Shoreline Area. Policies for Urban Shoreline Areas indicate that new development should protect or enhance the area character by limiting building density and height, providing ample shore setbacks and open

space, and promoting visual harmony. The proposed development activities on the property appear to comply with the policies and regulations specified under the applicable zoning and shoreline designations.

The proposal does not meet the requirements for a Shoreline Exemption under the Whatcom County Shoreline Management Program due to landfill and excavation in excess of 250 cubic yards per section 23.110.9. Section 23.50.30(d) states that if any part of a proposed development is not eligible for a Shoreline Statement of Exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project. Therefore, approval of a Shoreline Substantial Development Permit must be granted prior to commencement of the above development activities. To grant a Shoreline Substantial Permit, the applicant must demonstrate compliance with the policies and regulations set forth in the Shoreline Management Program (SMP).

## II. SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The project proposal requires a Substantial Development Permit pursuant to chapter 23.60 of the Whatcom County Shoreline Management Program (hereinafter "shoreline program"). In order for this permit to be approved, the proposal must satisfy the criteria of section 23.60.170 of the shoreline program. These criteria are set forth and addressed below.

**A. All regulations of the Shoreline Program appropriate to the shoreline designation and the type of use or development activity proposed shall be complied with except those bulk and dimensional standards which have been modified by a shoreline variance under section 23.60.180.**

Regulations for Land Fill and Excavation are contained in section 23.100.70.30 and the regulations associated with Residential development are located in section 23.100.130 of the shoreline program. Section 23.100.70.31(a) states that landfill and excavation are permitted subject to policies and regulations within the Urban shoreline area. In addition, section 23.100.130.31(a) states that residential development is permitted subject to policies and regulations within the Urban shoreline area.

General regulations applicable to all development, including landfill and excavation and residential development are contained in sections 23.90.40 and 23.90.60 of the shoreline program. These sections state that land clearing, grading, filling, removal of vegetation and alteration of natural features shall be kept to the minimum that is reasonably necessary to accommodate approved development. Disturbed areas shall be re-vegetated as soon as possible. Water quality shall not be significantly degraded. Development shall be designed, located, constructed and maintained to avoid obstruction of views or other adverse impacts on shore scenery and aesthetic quality.

In the review of all Shoreline Substantial Development Permits, consideration of public access is required. Provisions for public access shall be incorporated into a shoreline development proposal unless the applicant can demonstrate compliance with one of the exceptions set forth in section 23.90.40.50(a) of the shoreline program.

Sewage and garbage disposal facilities shall be provided as required by the Health Department and zoning regulations. Storm drainage facilities shall be provided as

required by the County Engineer, consistent with applicable drainage and development standards. Lighting shall be designed and operated so that it does not emit unreasonable or unnecessary glare, illuminate nearby properties or create hazards to traffic. Within 100' of Ordinary High Water Mark (OHWM), new distribution and on-site electrical and communication wiring shall be placed underground.

Additionally, required setback and buffer areas shall be planted with native or locally compatible species or maintained in a natural condition except where foot or bicycle traffic may require surfacing. Such areas may not be used for vehicle parking.

Comment:

The applicant proposes to construct a new single-family residence. The project includes approximately 435 cubic yards of landfill and excavation, which includes grading and filling necessary to construct the house foundation, driveway, and foundation.

Based on the site plan submitted as part of the application, the closest point of the residence, which is the northeastern corner, will be located approximately 75-feet away from the ordinary high water mark (OHWM) of Lake Whatcom. This exceeds the required shore setback of 30-feet for residential structures that is required within Urban Shoreline Areas. The project was unconditionally approved by the Whatcom County Critical area administrator and is exempt from SEPA review.

Public access provisions are not included in the proposed project to construct a single-family residence involving landfill and excavation of approximately 435 cubic yards. Section 23.90.50(b)(3) states that public access shall generally not be required for landfill and excavation activities. In addition, the goals and objectives for public access outlined in section 23.20.30 state that private property rights should not be infringed upon unless the public is granted a right of use or access to privately owned shoreline areas. No such public access currently exists on the property nor proposed as part of this project.

Water, electric and sanitary sewer infrastructure will be installed on the subject site in association with the proposed single-family residence. The proposal includes excavation and landfill necessary for the foundation, driveway, and parking area. Garbage disposal is not required for the excavation and landfill activities proposed in this application; no likely impacts from lighting are anticipated as a part of the proposed activities. Based on the discussion above, staff concludes that the project will meet all regulations of the SMP as appropriately conditioned.

**B. All Policies of the Shoreline Program appropriate to the shoreline designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated. A reasonable proposal that cannot fully conform to the policies may be permitted, provided it is demonstrated that the proposal is clearly consistent with the overall goals, objectives and intent of the program.**

The following is a summary of the applicable policies and a discussion of the project's compliance:

Landfill & Excavation Policies

Landfill and Excavation policies are set forth in Section 23.100.70.10 of the Whatcom County Shoreline Management Program. These policies generally state that landfill and excavation should be permitted in limited instances where consistent with the intent of the Shoreline Program. Landfill to restore recently eroded uplands or to moderately elevate low uplands to make them more useful for purposes that are consistent with the intent of the Shoreline Program may be permitted. Upland excavation should be limited to the minimum necessary to accommodate permitted development due to potential adverse impacts to surface and subsurface hydrology, slope stability, erosion, fish and wildlife habitat, and aesthetic quality. Disturbed areas should be re-vegetated immediately to minimize impacts to fish and wildlife. Excavated materials should be deposited away from the shoreline in a manner consistent with the policies and regulations for landfill.

Comment:

The proposed landfill and excavation in association with the construction of the single-family residence will be located landward of Lake Whatcom Boulevard and the closest point is 75-feet from the OHWM of Lake Whatcom. The slope varies from approximately 30%-80% and slopes towards Lake Whatcom Boulevard. The property is vegetated with well established second growth Douglas Fir and Western Red Cedar with an understory of predominantly low bush vegetation. In accordance with Section 23.100.70.31(a), landfill and excavation are permitted in Urban Shoreline Areas. The proposed landfill and excavation activities aim to accommodate the proposed residential use of the property, which is supported by the shoreline program. An erosion control plan will be required to mitigate adverse impacts to water quality, fish and wildlife habitat during throughout construction. The project will be conditioned to require that disturbed areas be re-vegetated immediately to minimize impacts to fish and wildlife.

The project will be subject to Seasonal Clearing Activity Restriction that restricts that amount of exposed soils to 500 square feet in size from September 1<sup>st</sup> through April 30<sup>th</sup>. The project will be conditioned to comply with Lake Whatcom Watershed Overlay regulations that will limit the amount of canopy removal to 35% and require the establishment of an on site stormwater facility.

Residential Policies

Residential policies are set forth in Section 23.100.130 of the Whatcom County Shoreline Management Program. These policies generally state that new development should be encouraged to locate in already developed areas or in areas officially planned for moderate to high-density residential uses. Structures or development for uses accessory to residential use should preserve shore open space, be visually and physically compatible with adjacent cultural and natural features and be reasonable in size and purpose. Future development should provide ample open space between structures and water bodies or wetlands, and along site boundaries, so as to provide space for outdoor recreation, protect natural features, preserve views, or to minimize use conflicts. Extensive new development should be required to provide public access to publicly owned shoreline or public water bodies.

Comment:

According to the Whatcom County Zoning Map, the subject site is zoned Residential Rural (R5). Chapter 20.36.051 states that one single-family dwelling unit per lot is permitted in the Residential zoning designation. The Rural zoning designation allows residential development, provided that the development density does not exceed 1 dwelling units per five acres. The size of the subject site is approximately 16,720 square feet and the proposed use of the site does not exceed the building density requirements. Pursuant to the Whatcom County Shoreline Management Program, the subject property is designated an Urban Shoreline Area. Per 23.100.130.31(a), residential development is permitted within the Urban Shoreline Area. The project has been conditioned to ensure compliance with the prescribed setbacks, and height requirements listed in 23.100.130.33 and 23.90.60 at time of building permit application. Note that section 23.90.64 states that open space requirements shall not apply to a single family dwelling on a legal lot of record. The proposed development activities on the property appear to comply with the policies specified under the applicable zoning and shoreline designation.

### III. ZONING REVIEW

#### Site Description

The subject property is located at 2653 Strawberry Shores Drive along the north-western edge of Lake Whatcom. The property is composed of three narrow lots that slope steeply to the north towards Lake Whatcom Boulevard. The slope varies from approximately 30%-80% and slopes towards Lake Whatcom Boulevard. The property is vegetated with well established second growth Douglas Fir and Western Red Cedar with an understory of predominantly low bush vegetation.

The subject lot is located within the Lake Whatcom Watershed and per WCC 20.71.302(2) at least 90 percent of the lot shall be kept free of structures and impervious surfaces. The Whatcom County Watershed Administrator submitted a memo limiting the future development to limitations set forth in WCC 20.71.300. Additionally, the memo referred to code citations for canopy retention, Temporary Erosion and Sediment Control, seasonal restriction, and the requirement for an onsite storm water facility per Whatcom County Development Standards.

Building height in the Rural zone is limited to 35-feet per WCC 20.36.400. Any portion of buildings that fall outside of the jurisdiction of the Whatcom County Shoreline Management Program shall comply with WCC 20.36.400.

#### Variance Review

In order for any variance to be approved, it must demonstrate compliance with the variance criteria of WCC 20.84.120, 1 through 3, as follows:

- 1) The granting of this variance 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.

Comment:

Staff has no reason to believe that this variance has been requested for financial reasons, or by any previous actions of the property owners. The hardship is created simply by the topography, shape and size of the subject parcel.

This variance does not constitute a grant of special privilege because single family residential development is the primary use of property in the surrounding area.

**2)** Because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, 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

Comment:

Again, the special circumstance in this case is the size, shape and topography of the site. It is clear that the building envelope indicated on the site plan, and the varying steep slope, severely limits placement of a residence and garage, required access, and parking.

Since the design shows the placement of the residence in the most logical (widest and flattest) area of the site, it does not appear that a residence and garage could be constructed elsewhere on the property without obtaining a zoning variance due to the slope. There is no evidence that granting of the requested variance will be detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject is situated.

**3)** 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.

Comment:

The proposed footprint of the residence is of average size, (1,585 -square feet. There is no evidence to support a finding that the request is a result of design preferences or aesthetic considerations, since there are actual physical constraints on the subject site.

#### IV. PUBLIC COMMENTS

One public response was received from Max Hurlbut on May 9, 2008. Mr. Hurlbut resides two lots to the west of the subject property. Mr. Hurlbut's objects to the set-back as "it will require substantially more earth & trees to be removed from a steep and unstable slope. " Mr. Hurlbut also objects to any land disturbance, construction, or tree removal on the westernmost 80 foot lots as they will forever alter the natural drainage of the entire hillside & place his house & Lake Whatcom in jeopardy from run-off & slides.

*Comment: The project was reviewed by the Whatcom County Geologist. The project has been conditioned so that any proposals for residential construction will require professional assessment by a qualified professional to determine inherent slope stability and recommend appropriate mitigating design.*

#### V. AGENCY COMMENTS

The **Critical Areas Specialist** submitted the following comments regarding the proposed project April 18, 2008:

- *There will be no wetland or habitat conservation area impacts as a result of the project. OK.*

The applicant shall comply with all of the requirements of the Whatcom County Critical Areas Specialist and unless modified by the Whatcom County Critical Areas Specialist or appealed to the appropriate agency.

The **Whatcom County Geologist** submitted the following comments regarding the proposed project May 22, 2008:

*Property lies within a potential landslide hazard area and any development is subject to the CAO-GHA regulations. Proposals to construct a residence on the property will require professional assessment by a qualified professional to determine inherent slope stability and recommend appropriate mitigating design.*

The applicant shall comply with all of the requirements of the Whatcom County Geologist unless modified by the Whatcom County Geologist or appealed to the appropriate agency.

The **Whatcom County Watershed Specialist** submitted the following comments and conditions of approval on May 22, 2008:

*The following shall be conditions of approval of the above mentioned permits.*

1.) Temporary Erosion And Sediment Control (TESC) Plan – Per Water Resources Special Management Area (WCC 20.80.735) and Stormwater Special District (WCC 20.80.635). This will be required along with a building permit submittal.

TESC Site Plan (drawn to scale):

- 1) Depiction of all areas where soil disturbance will occur
- 2) Depiction of all areas where vegetation is to be removed. Clearing activity limits shall be marked and inspected on site.
- 3) Depiction and description of the type and location of ALL TESC BMPs to be utilized on site

2.) Seasonal Clearing Activity Restriction (WCC 20.80.735.2.e)

Exposed soils exceeding 500 square feet shall not be permitted from September 1st through April 30<sup>th</sup>

3.) Impervious surface requirements (WCC 20.71.302)

As this parcel is zoned R5A, no more than 10% of the total lot size, or 2,500 sq. ft. shall be covered with impervious surfaces. Impervious surfaces are defined in Whatcom County Code as those surfaces such as roof tops, walkways, patios, driveways, parking lots, concrete or asphalt paving, gravel roads or those areas which naturally impede the natural infiltration of stormwater.

4.) Tree Canopy Retention Requirements (WCC 20.80.735.2.d)

No more than 35% of the total tree canopy area or 5,000 sq. ft. of the total tree canopy may be removed.

5.) Stormwater Facilities Requirements ( WCC 20.80.636)

Any new construction which increases the amount of impervious surface on a lot by more than 500 sq. ft. shall provide permanent on-site stormwater quality and quantity facilities. Examples of these facilities may be found in Chapter 2 of the Whatcom County Development Standards.

6.) Pervious Surface Technology (WCC 20.71.603)

Any proposal to use pervious paving technology shall be accompanied by a specification sheet so that staff can determine if the proposed technology meets the 2005 Low Impact Development Manual as prepared by the Puget Sound Action Team.

The applicant shall comply with all of the above requirements of the Whatcom County Watershed office unless modified by Whatcom County Planning & Development Services or appealed to the appropriate agency.

The **Whatcom County Public Works Department** submitted the following comments and conditions of approval on July 2, 2008:

*The Engineering has the following requirements for the proposed project:*

**\*\*\*\*\*All development shall comply with WC Development Standards.**

1. The applicant shall obtain an address from the Engineering Services for the proposed SFR.

2. *The proposed development is subject to Lake Whatcom watershed review. Detailed drainage proposal and TESC Plan shall address all clearing activities associated with a fill and grade permit or building permit.*
3. *Private driveway beyond the existing 3 short plats shall be improved as per Road Development Standards for private roads. Fire Marshal may require a turnaround to be installed at the end of developed driveway at this time.*
4. *For the future references: The existing 30 ft private easement shall serve up to 6 users. 60 ft wide easement shall be established for more than 6 future users beyond this property.*
5. *The applicant shall be aware that use of the existing easement entitles him/her to joint road maintenance agreement, as per every Short Plat notes.*

**\*\*\*\*NOTE:** *Submitted legal documents are still somewhat unclear questioning the applicant's legal right to access the proposed site via existing 30 ft private easement.*

***\*\*All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.***

The applicant shall comply with all of the above requirements of the Whatcom County Public Works Department unless modified by Whatcom County Public Works or appealed to the appropriate agency.

The **Whatcom County Building Department** submitted the following comments and conditions of approval on May 28, 2008:

*The following initial conditions are required for this permit. They are subject to change and additional conditions will be included when more detailed plans are submitted.*

*These findings are based on review of the applicant's 4.1.08 Master Application for Discretionary Land Use Permit and 2.26.08 Zoning Variance Supplemental Application. A Site Plan with topography (1.21.08) and Exterior Elevations (1.3.08) were also included.*

1. *A building permit is required for this proposal. It will be reviewed under the current edition of the International Residential Code (IRC) and comply with all other applicable codes and ordinances adopted by Whatcom County.*
2. *If the proposed building does not meet IRC requirements for conventional light-frame wood construction, a structural analysis by a Washington State Professional Engineer will be required.*
3. *Mechanical equipment and plumbing system installations shall comply with the current adopted edition of the International Mechanical Code (IMC), International Fuel Gas Code (IFGC), and the Uniform Plumbing Code (UPC).*
4. *The building shall comply with the 2006 Washington State Energy Code (WSEC) and the 2006 Washington State Ventilation and Indoor Quality Code (VIAQ).*
5. *Provide approved verification from the Whatcom County Environmental Health Dept. of water and sewer availability. If property is on a septic system provide an*

*approved permit & design which demonstrates the inclusion and/or capacity for the proposed ADU.*

6. *Submittal of the building permit application requires a prescheduled application appointment. Refer to the Permit Application Packet for Residential and Detached Accessory Structures for additional items required to apply for a building permit.*
7. *Demolition permit is required for the removal of any existing buildings, structures or other site improvements.*

The applicant shall comply with all of the above requirements of the Whatcom County Building Department unless modified by Whatcom County Building Department or appealed to the appropriate agency.

#### V. CONCLUSIONS AND RECOMMENDATION

Based on the above findings and technical review, Staff recommends approval of the request for a Shoreline Substantial Development Permit and Zoning Variance permit, subject to the following conditions:

1. *The proposed project shall conform to the design, configuration, size and location that has been approved except as modified by this approval. Any alteration of the approved design shall require additional review by the Whatcom County Hearing Examiner.*
2. *The project shall comply with all applicable federal state, and local laws and regulations.*
3. *The proposal must comply with all bulk and dimensional setback requirements as required by the Whatcom County Shoreline Management Program.*
4. *Exposed soils exceeding 500-square feet shall not be permitted from September 1<sup>st</sup> through April 30<sup>th</sup>.*
5. *During the off-season (October 1<sup>st</sup> to April 1<sup>st</sup>) all exposed soils shall be mulched per Whatcom County Standards and maintained through the off-season or until seeding or other stabilization methods are effective. In Water Resources Special Management Areas exposed soils shall be mulched throughout the year.*
6. *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 LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.*
7. *Excavated materials not utilized for foundation backfill, shall be disposed of in an approved fill site and shall not be placed in any wetland or critical area without express written approval from the Whatcom County Critical Areas Specialist and all other jurisdictional agencies.*

8. *The applicant shall comply with all of the above requirements of the Whatcom County Watershed Office as outlined in the May 22, 2008 memorandum unless modified by Whatcom County Planning & Development Services or appealed to the appropriate agency.*
9. *The applicant shall comply with all of the requirements of the Whatcom County Geologist as outlined in the May 22, 2008 comments unless modified by the Critical Areas Specialist or appealed to the appropriate agency.*
10. *The applicant shall comply with all of the requirements of the Whatcom County Public Works Department as outlined in the July 2, 2008 comments unless modified by the Public Works Department or appealed to the appropriate agency.*
11. *The applicant shall comply with all of the requirements of the Whatcom County Building Department as outlined in the May 28, 2008 comments unless modified by the Whatcom County Building Department or appealed to the appropriate agency.*
12. *Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate the approved development. Surfaces cleared of vegetation should be immediately re vegetated with native or compatible plants.*
13. *State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.*
14. *Construction shall commence within two years of the effective date of the Shoreline Substantial Development 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. Permit authorization shall terminate five years after the effective date of the Shoreline Substantial Development 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.*

Report prepared by:  
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Whatcom County Shorelines Administrator

And

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Senior Planner

