

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance) VAR2013-0003
Application for)
) FINDINGS OF FACT,
Warren Funt) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Variance to increase the maximum 25 foot building height requirement as per WCC 20.72.402 to 28 feet 4¼ inches for a proposed 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: Warren Funt

Property Location: 179 Bay View Drive
Point Roberts, WA 98281

Assessor's Parcel Number: 415336 022023

Zoning: Rural Residential [RR1] and Point Roberts Special District

Comprehensive Plan: Rural Community

Subarea: Point Roberts

Roads: Public

Water and Sewage Supply: Point Roberts Water District and Private OSS

Fire Protection: Whatcom County Fire District No. 5

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Blaine School District No. 503

Topography: The east (front) 130 feet of the subject property where the cabin is located over is fairly flat and is approximately two (2) feet below the average finished grade of Bay View Drive. The west (rear) 75 feet consists of a fairly steep bank with an approximate slope of 6%. The bottom of the bank is approximately 42 feet west of the existing cabin.

Vegetation: The subject site is lightly vegetated with decorative landscaping including a Douglas fir near the existing cabin. However, large alders, maples and other deciduous vegetation is located near the rear of the property and on the upward sloping bank.

Adjacent Land Uses:

North:	RRI - Single-family residences
East:	Boundary Bay – Tidelands
South:	RRI – Single-family residences
West:	RRI – Single-family residences

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington (RCW) Chapter 36.70

Revised Code of Washington (RCW) Chapter 58.17

Whatcom County Comprehensive Plan

Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures

Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Chapter 12.08, Development Standards

Whatcom County Code Chapter 15, Building Code/Fire Code

State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11,

Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Critical Areas

Whatcom County Code, Title 17 – Flood Damage Prevention Code

Whatcom County Code, Title 23 – Shoreline Management Program

Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, April 28, 2014

Mailed – Notice of Application, December 17, 2013

Notice of Public Hearing, April 25, 2014

Published – Notice of Application, December 19, 2013
Notice of Public Hearing, May 1, 2014

Hearing Date: May 14, 2014

Parties of Record

Warren Funt
179 Bay View Drive
Point Roberts, WA 98281

Gerald Veltkamp
Homeward Designs
204 6th Street
Lynden, WA 98264

Nick Smith
Whatcom County Planning and Development Services

Exhibits:

- 1 Land Use Application with attachments
 - 1-1 Variance Application Narrative
 - 1-2 Customer Receipt
 - 1-3 Agent Authorization
 - 1-4 Fee Responsibility
 - 1-5 Statutory Warranty Deed
 - 1-6 Determination of Completeness, Dec 2, 2013
 - 1-7 PDS Staff Memo to Tech Committee, Dec 16, 2013
 - 1-8 PDS Notice of Application, Comment Form Letter
 - 1-9 Mailing Labels
 - 1-10 Land Disturbance Permit Application
 - 1-11 Preliminary Traffic & Concurrency Information
 - 1-12 Preliminary Stormwater Proposal
 - 1-13 Revocable Encroachment Permit Application
 - 1-14 On-Site Sewage System Report of System Status
 - 1-15 PDS Hearing Examiner Checklist, April 7, 2014
- 2 Staff Report, dated May 5, 2014
- 3 Agency Comments: Fire Inspector, Dec 16, 2013; Engineering Technician, April 5, 2014; Shoreline Administrator, Jan 8, 2014; Plans Examiner, Jan 6, 2014; PW Engineering Services, Jan 3, 2014; Flood Review, Dec 17, 2013; Geotechnical Approval, Dec 16, 2013

- 4 Public Comments: Shelley Damewood, Dec 31, 2013; Jeff and Jennifer Urqluhart; David and Marilyn Paller
- 5 House Plan Graphic Design
- 6 Site Photos, January 3, 2014
- 7 Revised Site Plan, March 7, 2013, with Shoreline Approval dated June 14, 2013
- 8 Aerial Site Photo
- 9 Vicinity Map
- 10 Certificate of Mailing, Notice of Application, Dec 17, 2013
- 11 Legal Notice of Application, Dec 19, 2013
- 12 Certificate of Mailing, Notice of Public Hearing, April 25, 2014
- 13 Certificate of Posting, Notice of Public Hearing, April 28, 2014
- 14 Affidavit of Publication, Notice of Public Hearing, May 1, 2014

II.

The Land Use Services Division of Whatcom County Planning and Development Services, in a Staff Report, dated May 5, 2014, recommended approval of this proposal, subject to conditions. The Findings of Fact and Conclusions of Law set forth in the Staff Report, Exhibit No. 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 request to increase the maximum 25-foot building height for a proposed single-family residence 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 Zoning 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

Warren Funt is hereby granted a Zoning Variance to increase the 25-foot building height requirement to 28-feet, 4 ¼-inches for the construction of a single-family residence to be located on Assessor's Parcel No. 415336 022023, addressed as 179 Bay View Drive, Point Roberts, Washington, subject to the following conditions:

1. The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. The Applicant shall obtain a building permit issued by Whatcom County Planning and Development Services prior to the commencement of construction activities.
3. 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 (384-2280); 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 Lummi Sche'lan'en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

4. Pursuant to WCC, Title 14, the owners of the property upon which this Zoning Variance is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on the building permit issued by Whatcom County Planning and Development Services.
5. The Applicant shall comply with Whatcom County Development Standards for all development, unless modified by the administering Official, or appealed to the appropriate agency.
6. The Applicant shall not extend structural overhangs further than 18-inches into the side and rear yard setbacks, unless modified by the administering Official, or appealed to the appropriate agency.
7. The Applicant shall submit a detailed drainage proposal and TESC Plan addressing all clearing activities with a Fill and Grade Permit or Building Permit.
8. The Applicant shall obtain a Revocable Encroachment Permit for the construction of a new residential access off of Bay View Drive.
9. The Applicant shall setback the proposed structure 28-feet, 4 ¼-inches from the property line fronting Bay View Road and 8-feet 4 1/4-inches from the side and rear property lines.
10. The Applicant shall comply with the Conditions of Approval of Shoreline Conditional Use Permit, SHC2013-0004.

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 27th day of May 2014.



Michael Bobbink, Hearing Examiner

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

EXHIBIT

#2

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

RECEIVED

MAY 13 2014

Date: May 5, 2014
Hearing Date: May 14, 2014

WHATCOM COUNTY
HEARING EXAMINER

The application of **Warren Funt** for
a Zoning Variance

VAR2013-00003
FINDINGS, CONCLUSIONS, AND
RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The applicant is requesting a zoning variance to increase the maximum 25 foot building height requirement as per WCC 20.72.402 to 28 feet 4¼ inches for a proposed single-family residence.

Recommendation: The Technical Review Committee recommends approval subject to the attached conditions.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant/Agent: Homeward Designs, Inc.
Gerald Veltkamp
204 6th Street
Lynden, WA 98264

Owner: Warren Funt and Karen Dickson
179 Bay View Dr.
Pt. Roberts, WA 98281

Site Location/Address: 179 Bay View Dr.
Pt. Roberts, WA 98281

Abb. Legal Description: A portion of the Northeast Corner of Government Lot 2, Section 36, Township 41 North, Range 3 West; in Whatcom County, Washington.

Assessor's Parcel Number: 41533 6022023 0000

<u>Zoning:</u>	Rural Residential (RR1) & Point Roberts Special District
<u>Shoreline Designation:</u>	Shoreline Residential
<u>Applicable Shoreline Permit:</u>	SHC2013-00004
<u>Comprehensive Plan:</u>	Rural Community
<u>Subarea:</u>	Point Roberts
<u>Lot Size:</u>	17,987 Square Feet
<u>Roads:</u>	Public
<u>Water & Sewage Supply:</u>	Point Robert Water District & Private OSS
<u>Fire Protection:</u>	Whatcom County Fire District #5
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Blaine School District # 503
<u>Topography:</u>	The east (front) 130 feet of the subject property where the cabin is located over is fairly flat and is approximately two (2) feet below the average finished grade of Bay View Drive. The west (rear) 75 feet consists of a fairly steep bank with an approximate slope of 6%. The bottom of the bank is approximately 42 feet west of the existing cabin.
<u>Vegetation:</u>	The subject site is lightly vegetated with decorative landscaping including a Douglas fir near the existing cabin. However, large alders, maples and other deciduous vegetation is located near the rear of the property and on the upward sloping bank.
<u>Adjacent Land Uses:</u>	North: RRI - Single-Family Residences East: Boundary Bay - Tidelands South: RRI - Single-Family Residences West: RRI - Single-Family Residences

B. AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

1. Revised Code of Washington (RCW) Chapter 36.70
2. Revised Code of Washington (RCW) Chapter 58.17
3. Whatcom County Comprehensive Plan

4. Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
5. Whatcom County Code, Title 20 - Official Whatcom County Zoning Ordinance
6. Whatcom County Code, Title 14 - Use of Natural Resources
7. Whatcom County Code Chapter 12.08 - Development Standards
8. Whatcom County Code Chapter 15 - Building Code/Fire Code
9. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
10. Whatcom County Code Chapter 16.16 - Critical Areas
11. Whatcom County Code, Title 17 – Flood Damage Prevention Code
12. Whatcom County Code, Title 23 – Shoreline Management Program
13. Whatcom County Code, Title 24 - Health Regulations

III. APPLICATION PROPOSAL

The applicant, Gerald Veltkamp of Homeward Design Inc. and on behalf of the subject property owners, has submitted an application requesting a zoning variance to increase the 25 foot building height requirement as per WCC 20.72.402 to 28 feet 4¼ inches. The applicant wishes to rebuild the existing single-family residence on site. The applicant is requesting the variance because the property is located in the FEMA Flood “V” zone and the livable floor area of the proposed structure must be located above the required 12 foot base flood elevation (BFE).

Specifically, the applicant has proposed to demolish the existing cabin on site and construct a new two-story single family residence. The proposed development received a Shoreline Conditional Use Permit (SHC2013-00004) from Planning and Development Services on June 26, 2013. The shoreline permit granted the applicant the ability to rebuild and expand the existing residence in a footprint that does not exceed 2,500 square feet and is not further waterward then what currently exists. As part of that application, staff determined that the subject site is partially located within the FEMA Flood “V” zone, which has a base flood elevation of 12 feet. The subject site has an existing elevation of 7.5 – 8 feet. As a result, the proposed residence must be located on columns that are elevated four (4) feet above the existing grade.

After the shoreline approval, the applicant began designing the proposed residential structure. However, it became evident that the site could not adequately accommodate a two-story structure and still meet the required 25 foot building height with the requirement that the foundation be elevated an additional four (4) feet.

Building height, as defined by WCC 20.97.040, is the vertical distance from grade plane to the average height of the highest roof surface. The average “roof height” is measured from the eave line of the highest roof (where the roof plane intersects the outside wall) to the highest peak of the roof. The applicant has applied for a variance to increase the average roof height by 3 feet 4¼ inches. The Shoreline Management Program (SMP), which measures building height differently (from average grade to the highest point on the structure), requires that the proposed

structure not exceed a shoreline building height of 30 feet. The applicant has proposed to construct the structure to the 30 foot measured SMP height requirement. WCC 20.04.030 (Interpretation and conflict) states that "in the event that districts are overlain by Shoreline Management Program designation(s), the most restrictive regulations of either the Shoreline Management Program or the Official Whatcom County Zoning Ordinance shall apply." Since the applicant has proposed to adhere to the 30 foot SMP measured height requirement, the subject variance is essentially only for a change in the pitch of the proposed structure's roof. Variances to the (zoning) building height requirement in Point Roberts are specially provided for in WCC 20.72.403(1)-(2).

IV. SITE DESCRIPTION

The subject property is approximately 17,987 square feet in size. The site is largely flat, except for the rear portion of the property which abuts and is located on a large bluff. The area surrounding the existing cabin and towards the bay is level, but is approximately 2 feet below Bay View Road. Approximately 42 feet west of the existing cabin is the bottom toe of the described bank. The rear property line extends 75 feet up the side of the bank. The bank has an approximate slope of 6% and rises in elevation to a height of at least 75 feet. On top of the bank is a separate, privately owned single-family residence and a tennis court.

Currently, the site consists of a 984 square foot "Pan Abode" cabin. The single-story cabin has one deck that extends out 13.5 feet waterward (east) and another deck that extends out 8 feet from the southwest corner of the building. The cabin generally matches the same waterward facing sight line as the two existing residences to the north and south. The subject site contains an existing upgraded septic system, which is located between the cabin and the above mentioned bank. The site currently has approximately 2,343 square feet (13%) of existing impervious area, which includes structures, roof overhangs and parking surfaced areas. The subject property obtains vehicular access from Bay View Drive, which runs along the east property line and to the west of the Maple Beach bulkhead.

The subject site is zoned Rural Residential (RR1) and is located within the Point Roberts Special District. The property is surrounded by existing single family residences, except for Bay View Drive. The subject site is lightly vegetated with decorative landscaping around the residence and large trees such as alders, maples and other deciduous vegetation on the upward sloping bank.

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: The Notice of Application for this proposal was published on December 19, 2013. The fifteen (15) day comment period ended on January 3, 2014.

Notice of Public Hearing: The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

Public Comment: During the public comment period for the Notice of Application, Whatcom County Planning & Development Services Department received two comments (a third was an email from a neighboring property owner that requested additional information). A summary and discussion of the two comments are listed below:

Comment: A property owner off of Whalen Drive commented by stating that she did not approve of the proposed variance, and that until the community has a chance to change the zoning in total, everyone should have to adhere to the current rules and regulations.

Response: Variances to the building height requirement are specifically stated for in the Point Roberts Special District (WCC 20.72.403), which is unlike other zones districts in the Whatcom County Zoning Ordinance. According to the Point Roberts Character Plan and WCC 20.72.403(1), the intent of the 25 foot building height requirement is to ensure that "view corridors to tidal waters are maintained." However, if views are not obstructed then a variance, per WCC 20.84, is an appropriate path to obtain an increase in building height up to 45 feet. As such, staff believes that the current rules and regulations (County Code and the Character Plan) do properly address this circumstance; where an increase in building height is appropriate when the proposed building does not obstruct views.

Comment: A property owner off of Kilarney Place also stated that she was not in favor of granting a height variance in the area of small recreational residences. The lots on Bay View are small and the area of Maple Beach is densely populated with recreational and permanent homes that comply with the Whatcom County development standards. The property owner further stated that "unless there is some compelling reason for an additional 3.34 feet, I see no reason to grant a variance as any good architect can work within the existing standards."

Response: The subject property is located in the FEMA Flood "V" zone and must be elevated in height by an additional four (4) feet. Two-story structures in other areas of Point Roberts that are outside of the flood zone can more easily adhere to the 25 foot building height requirement. The proposed structure is a replacement of an existing one-story cabin. Two-story residences surround the subject property and are similar in footprint and size (30 feet from grade to roof peak). The proposed structure will comply with the shoreline height of 30 feet (grade to highest roof surface). The subject variance is only for a change in the pitch of the roof, for which WCC 20.72.403(2) states is appropriate when it can be shown that view corridors will not be obstructed.

The Technical Review Committee finds that public comment submitted during the 15 day public period have been adequately addressed in the above discussion.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from SEPA threshold review.

Pursuant to WCC 16.08 and WAC 197-11-800 (6)(b), minor land use decisions such as the granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location and/or surrounding are categorically exempt.

VII. CONSISTENCY WITH REGULATIONS, FINDINGS OF FACT

Zoning Variance - Applicable Policies and Regulations

In order for a variance to be approved it must satisfy the criteria of WCC 20.84.120 (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.

The following circumstances, pursuant to WCC 20.84.120 (1)-(3), shall be found to apply in order to grant a variance:

- 1. 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.**

Discussion: Staff has no reason to believe that this variance has been requested for financial reasons, is based upon reasons of hardship caused by previous actions or is for pecuniary reasons alone. As stated, the property is located in the FEMA Flood "V" zone and the proposed structure must be elevated four (4) feet above the existing grade. The additional four (4) foot required foundation height makes it difficult for this site to accommodate a two-story structure that meets the applicable 25 foot building height

requirement as measured by WCC 20.97.040. The applicant is only requesting 3 feet 4¼ inches in building height. As such, the variance would not be necessary if the development was not located in the flood zone.

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 zone 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.**

Discussion: The applicant has proposed to construct a 2,050 square foot single-family residence on a parcel that is within the FEMA Flood "V" zone. Two-story structures outside of the flood zone can more easily adhere to the 25 foot building height requirement. Other properties outside of the flood zone can also add fill to a site so as to increase the average finished grade, which would result in a taller structure without having to obtain variance. However, this property cannot add additional fill to the site because it would adversely affect neighboring properties in a flood event. With the above circumstance considered, staff believes that the strict application of the zoning ordinance would deprive the subject property owner of an improvement that is otherwise allowed on other lots in Point Roberts.

3. **The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject is situated.**

Discussion: The granting of the variance will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity. The proposed structure will look similar in size and appearance to other surrounding residences. As stated, the proposed structure will still adhere to the 30 foot (grade to highest roof peak) shoreline height requirement.

WCC 20.72.403 (1) through (2) states that besides meeting the requirements of Chapter 20.84 WCC, the maximum building height for any use outside of the Small Town Commercial Zone may be increased to 45 feet subject to the following conditions:

1. **The resultant higher structure will not unreasonably impede views from other properties any more than would a similar structure of the same mass which conforms to the 25-foot maximum building height.**

Discussion: During the public comment period, staff did not receive any comments that stated the proposed structure will obstruct the views of neighboring residences. As stated, a large bank (in excess of 75 feet in height)

backs up to the proposed development. Prior to this application, the applicant had also obtained a Shoreline Conditional Use Permit. SHC2013-00004 requires that the structure not be extended further waterward than what currently exists. The existing structure similarly matches the same sight line of the neighboring residences to the north and south. As such, the proposed increase in height will not obstruct the views of those side facing neighboring residences anymore than a structure that meets the 25 foot building height requirement.

2. Building setbacks pursuant to this chapter and WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 25 feet as applicable to all setbacks.

Discussion: According to WCC 20.80.210 (RR), structures are required to be setback 25 feet from the front property line and 5 feet from the rear and side property lines. If WCC 20.72.403 (2) is applied, the applicable building setbacks for the proposed development would be 28 feet, 4¼ inches from the front property line and 8 feet, 4¼ inches from the rear and side property lines (an additional 3 feet, 4¼ inches). In review, the subject site contains enough area to conform to the additional building setback standards.

The Technical Review Committee finds that the requested variance to increase the applicable building height meets the requirements of both WCC 20.84.120(1)-(3) and WCC 20.72.403(1)-(2). As stated and as evident in the Point Roberts Character Plan, staff believes that WCC 20.72.403 specifically allows for variances from the 25 foot building height requirement when it can be found that view corridors will not be obstructed.

A. WCC Chapter 12.08 – Roads and Bridges

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

The Whatcom County Public Works Department Division of Engineering reviewed the proposal and submitted a memo dated January 3, 2014 with the following recommended conditions:

1. All development shall comply with the WC Development Standards.

2. The applicant shall obtain a Revocable Encroachment Permit for the construction of a new residential access approach off of Bay View Drive.
3. A detailed drainage proposal and TESC Plan shall address all clearing activities associated with a fill and grade permit or building permit.

The Technical Review Committee has determined that as conditioned, the proposed variance meets the requirements of WCC Chapter 12.08.

B. WCC Title 15 – Buildings & Construction

Building Code: WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

The Whatcom County Plans Examiner submitted a memo dated January 6, 2014 with the following comments and conditions:

1. A building permit is required for the proposed structure.
2. Submittal of a building permit application requires a prescreening of the project and a prescheduled application appointment. Refer to the Residential Structures and Detached Accessory Structures - Permit Application Packet for additional information and a description of the submittal documents required to apply for a building permit. The packet is available in our office or on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.

Fire Code: The Whatcom County Fire Marshal submitted a memo dated December 16, 2013 stating no conditions, concerns or comments for this project at this time.

The Technical Review Committee has determined that as conditioned, the variance would meet the requirements of WCC Title 15.

C. WCC Title 16 – Critical Areas Ordinance

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

Whatcom County Planning & Development Services Department Natural Resources Division Critical Areas wetlands staff reviewed the proposal through the Shoreline Conditional Use permit and determined that no potential wetlands or habitat conservation areas on the site will adversely be affected with the proposed development.

The Whatcom County Planning & Development Services Department Natural Resources Division Geologist also reviewed the proposal and stated the he had no conditions, concerns, or comments regarding this project at this time.

The Technical Review Committee has determined that the proposed variance will meet the requirements of WCC Chapter 16.16.

D. WCC Title 17 – Flood Division.

The purpose of WCC Title 17 is to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas.

Whatcom County Public Works Department River and Flood staff submitted a December 17, 2013 email stating no concerns/conditions in regards to the subject variance to increase the allowable building height for a proposed single-family residence. However, the conditions outlined in the April 5, 2013 Shoreline's permit (SHC2013-00004) are still applicable. Those comments and conditions are as followed:

The subject permit to construct a new Single Family Residence has been reviewed for compliance with the Whatcom County Flood Damage Prevention Code (Title-17) and the associated requirements of the Endangered Species Act (ESA). According to the attached Digital Flood Insurance Rate Map (DFIRM) the proposed building site is located within a Coastal High Hazard Area or Flood Zone V with a Community Determined Base Flood Elevation (BFE) of 12.0 feet (NGVD29). As such, the structure will be subject to Title-17 flood proofing requirements prior to approval of a building permit (see WCC 17.16.020 through 17.16.040 and 17.16.140). Primarily, Section A of 17.16.140 requires the structure to be elevated on pilings and/or columns so that the lowest horizontal structural member is elevated to or above the BFE.

A registered professional engineer must certify that the design and methods of construction are in accordance with 17.16.140. In addition, the International Building Code (IBC) requires the structure to have a Finished Floor Elevation (FFE) at least 1-foot above the BFE. We advise that the project architect and/or engineer work with us throughout the design process to assure all necessary requirements are being met prior to submitting the final drawings for a building permit.

Development proposals within the regulatory floodplain require compliance with the Endangered Species Act (ESA). Accordingly, a habitat assessment and, if necessary, a mitigation plan must be completed by a qualified professional in accordance with FEMA's Floodplain Habitat Assessment and Mitigation guidance document prior to approval of a building permit. Best Management Practices (BMP's) will be required in order to address and construction related impacts to water quality, the shoreline, and/or existing habitat.

If a mortgage will be involved with the proposed development, flood insurance will be required. We advise that the applicant contact the insurance company to better understand the coverage requirements and what the premiums will be.

The Technical Review Committee has determined that as conditioned, the proposed variance will meet the requirements of WCC Chapter 20.80.635.

E. WCC Title 20 – Official Whatcom County Zoning Ordinance

WCC 20.32.350 – Building Setback Criteria:

Building setbacks shall be administered pursuant to WCC 20.80.210 and WCC 20.72.403 (2), which states that building setbacks shall be increased by one foot for each foot of building height in excess of 25 feet as applicable to all setbacks.

WCC 20.80.210 (RR) states minimum building setbacks of 25 feet from the front property line and 5 feet from the rear and side property lines.

Discussion: If approved and per WCC 20.72.403 (2), the applicable buildings setbacks for the proposed single-family residence would be 28 feet 4¼ inches from the front property line and 8 feet 4¼ inches from the rear and side property lines. As proposed, the development will conform to these setbacks.

The Technical Review Committee finds that the proposed development will conform to the applicable building setback requirements.

WCC 20.97.040 – Definition of Building Height:

Building height is defined as the vertical distance from grade plane to the average height of the highest roof surface. "Grade plane" is defined as the reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet (1,829 mm) from the building, between the

building and a point six feet (1,829 mm) from the building. See Figures 20.97.040 A and 20.97.040 B.

Figure 20.97.040 A
Determining Grade Plane (GP) and Building Height (BH)

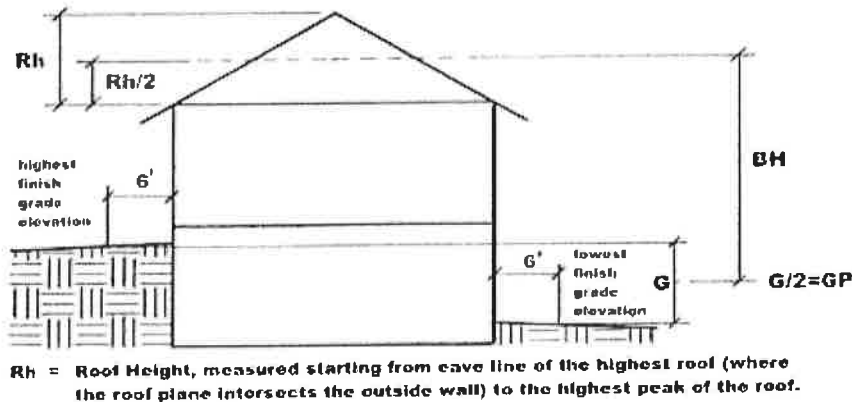
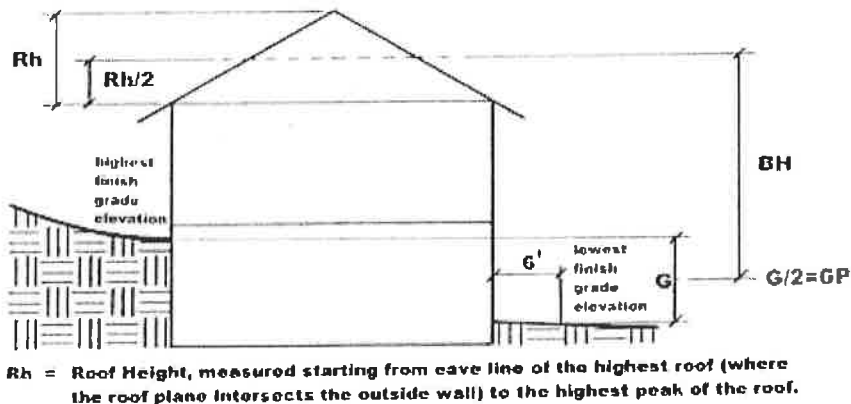


Figure 20.97.040 B
Determining Grade Plane (GP) and Building Height (BH)



WCUSD 4/18/2005

Discussion: The subject variance is to increase the average point between the eave line to the highest point of the roof. As stated, the development has been granted a Shoreline Conditional Use permit, which allows for a maximum building height of 30 feet. However, this is measured from grade to the highest point of the structure, pursuant to WCC 23.110.080 (7). WCC 20.04.030 (Interpretation and conflict) states that "in the event that districts are overlain by Shoreline Management Program designation(s), the most restrictive regulations of either the Shoreline Management Program or the Official Whatcom County Zoning Ordinance shall apply." As such, a zoning

variance must be obtained if "the eave line to the highest point of the roof" exceeds the maximum allowable building height as specified in the applicable zone district (even though the proposed development meets the applicable Shoreline Management Program measured height of 30 feet).

WCC 20.72.402 – Point Roberts Height Limitations:

The maximum building height is 25 feet unless further restricted by the Whatcom County Shoreline Management Program or the requirements of the adopted character plan.

Discussion: The subject variance is for an increase of 3 feet 4¼ inches to the 25 foot allowable building height of the Point Roberts Special District (WCC 20.72). As stated, the subject development has received a Shoreline Conditional Use Permit, which allows for a maximum building height of 30 feet. In review, the proposed development will comply with the 30 foot to highest peak building height requirement of the Shoreline Management Program, but not the 25 foot "eave line to the highest point of the roof" zoning requirement.

Point Roberts has the second lowest building height requirements, per the Zoning Ordinance, in Whatcom County. Primarily, this is to ensure that view corridors of the tidal waters are maintained. The Character Plan, which is a subarea plan of Point Roberts states that variances to the 25 foot building height requirement are permissible when it can be found that view corridors will be maintained, pursuant to Section 4-004 and 4-4005. In review, the subject site abuts a steep slope along the rear property line, which is over 75 feet in height. As such, residences behind the subject development will not have their views obstructed by the proposed 28 foot 4¼ inch tall single-family residence.

The Technical Review Committee finds that the proposed development, besides the increase to the allowable building height, conforms to the applicable variance requirements of WCC 20.72.402.

WCC 20.32.450 – Lot Coverage:

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 2,500 square feet or 35 percent, whichever is greater of the total area.

Discussion: As proposed, the total structural coverage will be less than 2,500 square feet.

WCC 20.32.653 – Parking Requirements:

Parking shall conform to the requirements of WCC 20.80.500, which requires two (2) off-street parking stalls with a minimum rectangular dimension of 10 feet in width and 20 feet in length.

Discussion: As proposed, the development conforms to the off-street driveway requirement.

WCC 20.32.656 – Drainage:

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

Discussion: Whatcom County Engineering staff has reviewed the preliminary stormwater proposal and further has determined no concerns. As conditioned, temporary Erosion and Sediment Control measures will be required for the land disturbance work for this proposed development.

WCC 20.72.653 Tree canopy retention:

Lots less than one-half acre may remove 100 percent of the existing tree canopy on site; provided, that 30 percent of the pre-existing tree canopy shall be replanted.

Discussion: The area surrounding the residence contains minimal trees. As proposed, the development will conform to the tree retention requirements.

WCC 20.72.654 Site design/view corridors:

All structures or developments other than a single-family home on an individual lot shall conform to the requirements of the adopted Point Roberts Character Plan. Scenic views and open space shall be considered in all developments and the site plan designed to ensure view access is maximized while maintaining reasonable use of the development site.

Discussion: The proposed development is a single-family home and thus is exempt from the requirements of the adopted Point Roberts Character Plan.

WCC Chapter 20.78 Transportation Concurrency:

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

Public Works Engineering Services reviewed the Preliminary Traffic and Concurrency information submitted at the time of application. Based on the information submitted, a determination was made indicating that there are no further requirements for this proposal.

Discussion: The Technical Review Committee has determined that the proposal conforms to the requirements of WCC Chapter 20.78.

Water & Sewer:

Discussion: The site is served by Point Roberts Water District and a private onsite septic system. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.

Fire Protection:

Discussion: The proposed use is located within the service area designated as the Whatcom County Fire District #5. Residential uses are considered Rural levels of services, per the Whatcom County Comprehensive Capital Facility Plan. Therefore, the Technical Review Committee has determined that the project meets the requirements of WCC Chapter 20.80.212. The Technical Review Committee finds that no county facilities will be reduced below applicable levels of service as a result of the development.

The Technical Review Committee finds that the proposed variance, besides the reduction in the front building setback, conforms to the applicable requirements of the Whatcom County Zoning Ordinance.

F. WCC Title 23 – Shoreline Management Program

WCC Title 23 contains standards that regulate development within the shorelines of the state pursuant to the State of Washington Shoreline Management Act (SMA). The purpose and intent of the Whatcom County Shoreline Management (SMP), Title 23, is to promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Whatcom County shorelines; and to manage shorelines in a positive, effective, and equitable manner.

Whatcom County Planning & Development Services Department Natural Resources Division Shorelines staff reviewed the proposal and on January 8, 2014 provided the following comments and conditions:

A Shoreline Conditional Use permit was approved by Whatcom County on June 26, 2013, and subsequently approved by Department Of Ecology on July 18, 2013. No appeals have been submitted for either decision.

"Height" in the Shoreline Management Program (SMP) is defined as "the vertical dimension measured from average grade to the highest point of a structure; provided that, antennas, chimneys, and similar appurtenances shall not be used in calculating height, unless such appurtenance obstructs the view

of a substantial number of adjacent residences.173-27-140 states that no authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act (SMA) and the Whatcom County Shoreline Management Program (SMP)."

Within the Shoreline Residential designation single family residential developments shall not exceed thirty feet in height pursuant to 23.90.130.C. The proposed residence shall not exceed this thirty foot height limit without approval of a shoreline variance.

All conditions associated with the County approved Shoreline Conditional Use Permit (SHC2013-00004) and the subsequent DOE approval dated July 18, 2013 shall be complied with completely.

Any person has the right to appeal this determination pursuant to 23.60.15. Such an appeal shall be filed within twenty (20) calendar days of this administrative determination.

The proposed development, as conditioned will meet the requirements of the County Shoreline Management Program.

G. Health Code (Title 24)

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare.

The Whatcom County Health Department (WCHD) reviewed the application and stated no comments or concerns for this application.

The Technical Review Committee has determined that the project meets the requirements of WCC Title 24.

VIII. RECOMMENDATION

The Technical Review Committee recommends that the Whatcom County Hearing Examiner approve the applicant's variance request to increase the maximum allowable building height from 25 feet to 28 feet 4¼ inches for the construction of a single-family residence, subject to the requested conditions in Section IX of this report.

IX. CONDITIONS OF APPROVAL

1. Permit Changes or Modifications: The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.

2. Building Permit: Whatcom County Planning and Development Services must issue a building permit prior to the commencement of construction activities.
3. Chapter 5 Development Standards: The development shall comply with the Whatcom County Development Standards.
4. Revocable Encroachment Permit: The applicant shall obtain a Revocable Encroachment Permit for the construction of a new residential access off of Bay View Drive.
5. Drainage: A detailed drainage proposal and TESC Plan shall address all clearing activities with a fill and grade or building permit.
6. Building Setbacks: The proposed structure shall be setback 28 feet 4¼ inches from the property line fronting Bay View Rd and 8 feet 4 ¼ inches from the side and rear property lines.
7. Structural Overhangs: Structural overhangs may not extend further then 18 inches into the side and rear yard setbacks.
8. Shoreline Conditional Use Permit: The development shall comply with the conditions of the Shoreline Conditional Use Permit: SHC2013-00004.
9. Inadvertent Discovery: 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) LNTPO (384-2280) 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 Lummi Sche'lan'en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
10. Right to Farm: Pursuant to WCC, Title 14, the owners of the property upon which this variance is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on the building permit issued by Whatcom County Planning & Development Services.

Report prepared for the Technical Review Committee by:

Nick Smith
Planner – Permit Center Specialist

Exhibit
#2-1

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

RECEIVED

MAY 13 2014

WHATCOM COUNTY
HEARING EXAMINER

June 26, 2013

WHATCOM COUNTY SHORELINES CONDITIONAL USE PERMIT

Shoreline Conditional Use)	SHC2013-00004
Permit for)	
)	
Warren Funt)	

SUMMARY OF APPLICATION AND DECISION

Application: The applicant is requesting approval of a Shoreline Conditional Use Permit to expand a nonconforming single-family residence.

Decision: Pursuant to Chapter 90.58 RCW, a Shoreline Conditional Use Permit is hereby granted, subject to conditions of approval outlined within this permit.

PRELIMINARY INFORMATION

Applicant:	Warren Funt
Property Location:	179 Bay View Drive Pt. Roberts, Washington
Legal Description:	Within Section 36, Township 41N, Range 03 West, W.M. Assessor's Parcel Number: 415336022023
Adjacent Water Body:	Boundary Bay
Shoreline Designation:	Shoreline Residential
Statewide Significance:	No
Zoning:	Residential Rural
SEPA Review:	Categorically Exempt pursuant to WAC 197-11-800

Applicable Shoreline Program Provisions:

Authorizing Ordinances:

SMP 23.50	Applicability
SMP 23.70.010	Administrator

Applicable Shoreline Provisions:

SMP 23.10	Governing Principles
SMP 23.20	Goals and Objectives
SMP 23.30.060	Shoreline Residential Area
SMP 23.50.070	Nonconforming Development
SMP 23.60.040	Conditional Use Permit Criteria
SMP 23.60.130	Public Hearings
SMP 23.90	General Policies and Regulations
SMP 23.100.110	Residential
SMP 23.90.130	Shoreline Bulk Provisions
Chapter 11	Definitions

INTRODUCTION

The applicant requests of a Shoreline Conditional Use Permit to expand an existing non-conforming single-family residence.

Residential uses are generally allowed under WCC 23.100.11 of the Shoreline Program. Section 23.100.11 states that single family development is permitted in the Shoreline Residential designation subject to policies and regulations of the SMP. The site is physically separated from Boundary Bay by Bay View Dr. The existing residence is located approximately 60 feet from OHWM at its closest point. Pursuant to 23.90.13.C, the required shore setback is established by Whatcom County Code 16.16. Pursuant to 16.16.740, the required Habitat Conservation Area buffer is 150-feet from the OHWM. Staff has determined that the residential development is non-conforming as defined by the SMP.

Pursuant to 23.60.13 this application does not require a hearing. As a non-conforming structure, development of the site is constrained per the requirements of SMP 23.50.07(I). The Shoreline Program provides for the expansion of single-family residences by the addition of space to the main structure that would encroach further into areas where structures would not now be allowed may be approved by conditional use permit if all of the following criteria are met:

1. The structure must be located landward of the ordinary high water mark.
2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into any critical area established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area, or the minimum required side yard setback require a variance.
3. The area between the non-conforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of SMP 23.90.06.
4. The remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes.

In addition, 23.60.04.B states that uses specifically classified or set forth in the SMP as conditional uses may be authorized provided the applicant/proponent can demonstrate all of the following:

1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.
2. That the proposed use will not interfere with normal public use of public shorelines.
3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
5. That the public interest suffers no substantial detrimental effect.

In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

FINDINGS & CONCLUSIONS

The subject property is approximately 17,987 square feet in size and is relatively flat. The property is physically separated from Boundary Bay by Bay View Drive. Vegetation on the site is very minimal and consists of maintained lawn between the residence and Bay View Dr.

Single-family residences are listed as a preferred use in RCW 90.58.020. The subject site is located on privately owned property, and the proposed project will not interfere with normal public use of public shorelines. Surrounding properties that are located within the same residential area as the subject property are developed with single family residences of similar size and scale. The applicant is proposing to demolish an existing 984 square foot cabin and construct a 2,500 square foot residence. The proposed footprint expansion is in a northerly and southerly manner which is lateral with respect to the existing residential footprint. No waterward expansion is proposed. The proposal will not result in the conversion of new buffer vegetation. The project as proposed will not result in unreasonable adverse effects to the shoreline environment. It does not appear the public interest will suffer any substantial detrimental effect as a result of the approval of this project. The proposed development, as conditioned will not cause adverse effects to the shoreline environment in both the short and long-term. No public comments were received during the comment period for the proposal.

The proposed project meets the criteria of 23.50.07.I and therefore qualifies for review via a shoreline conditional use permit.

Pursuant to 23.60.01.C the project was reviewed to determine for consideration of potential cumulative effects that would result if similar developments were permitted in the area of the subject property. The location of the proposed expansion is located landward of the OHWM of Georgia Strait. While the proposal will remove existing lawn the subject site is functionally and effectively disconnected by the presence of Bayview Drive between

the lot and Boundary Bay. As such, the project will not result in additional loss of functional buffer. No detrimental impacts were identified to the shoreline environment during the course of this permit review. The proposal was reviewed for lot coverage compliance with the Whatcom County Zoning Ordinance and determined to be in compliance. The proposal as conditioned appears to comply with the density standards, development standards, bulk and dimensional setbacks, vegetation conservation standards, and critical area requirements. As such, additional approvals for additional developments where similar circumstances exist, are not likely to represent a cumulative environmental impact to the shoreline. It has also been determined that no use conflicts or view issues will result from the proposed expansion. It is the opinion of staff that this project as proposed and conditioned meets the ecological protection policies of the Whatcom County Shoreline Management Program resulting in no net loss of ecological functions and process and that the sum of similar permitted actions appears to comply with the policy of RCW 90.58.020.

Note that according to Washington Administrative Code (WAC) 173-27-200, approval of this Shoreline Conditional Use permit by Whatcom County has been sent to the Washington State Department of Ecology (DOE) for substantive review and approval. DOE shall render and transmit to local government and the applicant its final decision within thirty (30) days of the date of submittal by Whatcom County pursuant to WAC-173-27-130.

APPEAL RIGHTS

Pursuant to Section 23.60.15, the application for appeal from the Shoreline Administrator's decision must be submitted to the Planning and Development Services Department within ten (10) calendar days of the issuance of a Shoreline Conditional Use Permit.

Official: Sam McDaniel

Title: Shoreline Program Administrator

A handwritten signature in black ink, appearing to be 'SM', enclosed within a large, horizontal, oval-shaped stroke.

Dated: June 26, 2013

CONDITIONS ASSOCIATED WITH SHC2013-00004

1. *The proposed project shall conform to the design, configuration, size and location as approved on the site plan dated June 14, 2013, except as modified by this approval. Any deviation from the approved design shall require additional review by the Whatcom County Shorelines Administrator.*
2. *Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.*
3. *The applicant shall obtain a Building Permit(s) from the Whatcom County Planning & Development Services – Building Services Division prior to start of construction and demolition on the subject property. Such Building Permit(s) shall require development review by the Shoreline Administrator and appropriate development permits pursuant to 23.60.01. The building permit submittal shall include site plans consistent with the plans approved by this permit.*
4. *Future development permits shall demonstrate compliance with Title -17 flood proofing requirements prior to issuance and compliance with the endangered species act (ESA).*
5. *The future building permit shall comply with the height limit contained in the SMP or the Whatcom County Zoning Ordinance, the more restrictive shall apply.*
6. *Prior to issuance of the building permit, the applicant shall file a notice on title with the Whatcom County Auditor's Office along with a copy of the approved site plan. The notice on title shall be filed on forms provided by Whatcom County Planning and Development Services and shall include a copy of the site plan approved by this permit.*
7. *The applicant shall obtain all necessary permits from the Washington State Department of Archaeology and Historic Preservation prior to initiating construction activities.*
8. *A professional assessment shall be completed by a qualified professional to address the Tsunami and Seiche Hazard standards of the Whatcom County Shoreline Management Program (16.16.320.E and F). The primary purpose of the assessment is to determine if the proposal can avoid the Geologic Hazard Area and Frequently Flooded Areas per 16.16.320.A and 16.16.420.B. In the event that avoidance is not feasible, the assessment should provide an engineered design to minimize risk to health and safety, and protect the buildings and occupants from the hazards. At minimum the engineered design should use the Coastal High Hazard Areas standards found in WCC 17.16.140 as well as any other recommendation to protect the structure and its occupants from damage as determined by the qualified professional. Note that removal of natural beach materials such as rocks and logs is not supported as a mitigation measure. Structures should be designed and located to withstand impacts from such natural features in the event they become mobilized during a high water event.*

9. *Pursuant to 23.100.110.B.1.b, the professional assessment required in condition 7 above shall also include a geotechnical analysis of the site and shoreline characteristics to demonstrate that expansion of the existing shoreline stabilization should not be required over the lifetime of the new structure.*
10. *Construction shall commence within two years of the effective date of the Shoreline Substantial Development as defined by WAC 173-27-090 (3).*



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Bellingham Field Office • 1440 10th Street, Suite 102 • Bellingham, Washington 98225
(360)715-5200 • FAX (360) 715-5225

July 18, 2013

Mr. Warren Funt
c/o Mr. Gerald Veltkamp – Homeward Designs, Inc.
204 6th Street
Lynden, Washington 98264

Re: Whatcom County Shoreline Conditional Use Permit No. SHC2013-00004
Warren Funt - Applicant
Department of Ecology Project ID: 1834– **Conditional Approval**

Dear Mr. Funt:

On June 28, 2013, the Department of Ecology (Ecology) received approval of the above-referenced shoreline permit from Whatcom County Planning and Development Services (WCPDS). The project includes the complete removal, replacement and expansion of an existing non-conforming single-family residence along Boundary Bay. The project also includes construction of a new driveway.

By law, Ecology must review shoreline permits for compliance with:

- The Shoreline Management Act (Chapter 90.58 RCW);
- Ecology's Conditional Use Permit approval criteria (Chapter 173-27-160 WAC); and
- The Local Shoreline Management Program (SMP).

After review for compliance with the above provisions, Ecology must decide whether to approve, approve with conditions, or disapprove the shoreline conditional use permit.

Ecology's Decision:

Ecology approves your shoreline conditional use permit subject to compliance with the conditions required by WCPDS. In addition, the following Ecology conditions must also be met:

11. Copies of the professional assessments required in WCPDS Conditions 8 and 9 shall be sent to Ecology's Bellingham Field Office for review and approval prior to the start of construction. In addition, copies of the residential building plans shall also be provided for review by Ecology. Such plans shall illustrate any building foundation design recommendations or other mitigation measures identified within the professional assessments.

Funt
July 18, 2013
Page 2 of 2

12. The property owner hereby authorizes Department of Ecology staff and their designees to have access to the subject property for the purposes of compliance inspections. Except as otherwise conditioned by this approval, such right of access shall begin from the date of the receipt of this letter and extend for a period of five years following project completion. Ecology staff must provide reasonable notice to the applicant or their designee prior to coming onto the site.

Next Steps

Prior to any development authorized by this conditional use permit, the law requires you wait at least 21-days from the date this letter was mailed, the "date of filing." This waiting period allows anyone (including you) who disagrees with any aspect of the permit to appeal the decision to the state Shoreline Hearings Board (SHB). If no appeal is submitted during that time, the shoreline conditional use permit will be effective **August 7, 2013**.

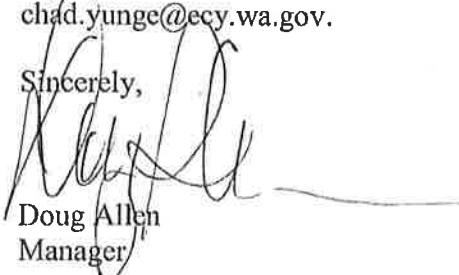
Please note however, that other federal, state, and local permits may be required in addition to this shoreline conditional use permit.

The Shoreline Hearings Board will notify you by letter if an appeal is received. Ecology recommends that you contact the SHB before starting development to ensure no appeal has been received. The SHB can be reached at (360) 664-9160 or <http://www.eho.wa.gov>.

If you want to appeal this decision, you can find appeal instructions (Chapter 461-08 WAC) at the SHB website referenced above. The instructions are also available on the following Washington State Legislature website: <http://apps.leg.wa.gov/wac/default.aspx?cite=461-08>.

If you have any questions, please contact Chad Yunge at (360) 715-5206 or via e-mail at chad.yunge@ecy.wa.gov.

Sincerely,



Doug Allen
Manager

cc: Sam McDaniel, WCPDS