BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE VARIANCE PERMIT ISSUED BY KING COUNTY TO DUANE L. HELL, DUANE L. HELL, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY AND KING COUNTY, Respondents.	SHB No. 79-13 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a shoreline variance permit by the permittee, came on for hearing before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, David A. Akana, William A. Johnson, Robert E. Beaty and Rodney Kerslake, convened at Lacey, Washington on May 17, 1979. Hearing examiner William A. Harrison presided.

Appellant, Duane L. Hell, appeared and represented himself.

WAH/LB

Respondent, King County, appeared by Anne Bradley, Deputy Prosecuting Attorney; respondent, Department of Ecology, appeared by Robert V. Jensen, Assistant Attorney General. Reporter Michelle E. Sexton recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

The appellant, Duane L. Hell, resides upon a hillside lot in Seacoma Beach subdivision on Puget Sound in King County. The upland edge of the hillside lies above his lot line. His single-family residence was built for seasonal use but, as is the trend in this community, appellant plans to expand it for year-around use.

II

The King County Shoreline Master Program (hereafter "master program") adopted pursuant to the Shoreline Management Act of 1971, chapter 90.58 RCW, designates appellant's lot in an "urban environment" and states, in particular:

> Single-family development shall maintain a shoreline setback of twenty (20) feet from either the ordinary high water mark or from the upland edge of the floodway or from the upland edge of areas of steep slope, slide hazard or unstable soils, whichever is greater. Regulation 409(2)(c).

Department of Ecology approved this master program. WAC 197-19-250.

Appellant's residence is presently 32 feet back from the ordinary high water mark. The residences of his neighbors to the north and

south are 12 and 16 feet respectively, back from the ordinary high water mark. These neighboring residences predate the master program, however, and King County has not granted any variance for residences to be closer than 20 feet to the ordinary high water mark in this subdivision.

III

On October 25, 1978, appellant applied for a shoreline variance permit to allow an addition to his residence with a 12 foot setback from the ordinary high water mark. A building plan, Exhibit A-3, included with the application revealed a specific design for the addition including both interior space and open decks. King County effectively denied that application while approving a variance from the master program provision requiring a setback of 20 feet from the upland edge of areas of steep slope. That approval was conditioned, however, that all portions of the structure, including decks and stairs, shall be set back a minimum of 20 feet from the ordinary high water mark. That approval also required conformance to the attached plans, one of which was Exhibit A-3. Department of Ecology approved the variance permit thus approved by King County. Appellant appeals the condition prescribing a 20 foot setback.

IV

Appellant contends that a 20 foot setback from the ordinary high water mark would place his addition on the hillside rather than at the foot of it, thus necessitating piling. While this may be so it does not pose a serious obstacle to construction as shown by the piling which now hold the existing residence. A setback of 20 feet would require a differen building plan than proposed by appellant in Exhibit A-3 but would allow the type of addition which appellant seeks.

S F No 9928-A

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The rule which governs approval or disapproval of shoreline variance permits is adopted by Department of Ecology, RCW 90.58.100(5), and appears as WAC 173-14-150 which states in pertinent part:

> . . .
> (1) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances should be shown and the public interest shall suffer no substantial detrimental effect.
> (2) Variance permits for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated by the department as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:
> (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable permitted use of the property.
> (b) That the hardship described in WAC 173-14-150(2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.
> (c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environemnt designation.
> (d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

S F No 2724-A

(e) That the public interest will suffer no substantial detrimental effect.

. . .

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments in the area where similar circumstances exist the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce substantial adverse effects to the shoreline environment.

II

The variance authorized by King County and Department of Ecology which approval was conditioned with a 20 foot setback from the ordinary high water mark is the minimum necessary to afford relief to appellant. The 12 foot setback proposed by appellant would not have an adverse environmental effect in this instance, yet does constitute more than the minimum necessary. We conclude that the shoreline variance permit approved by King County and Department of Ecology should be affirmed. Appellant should also have the opportunity to revise his building plan to meet the 20 foot setback condition and other applicable requirements of the master program.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board comes to this

ORDER

The variance permit approved by King County and Department of Ecology is affirmed, and the matter remanded to King County for appellant's revision of his diagram (Exhibit A-3) to reflect an allowable structure as provided for in the master program.

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DATED this 29th day of June, 1979.

SHORELINES HEARINGS BOARD

DAVE J. MOONEY, Chairman

CHRIS SMITH, Member

DAVID AKANA, Member

ROBERT E. BEATY, Member

WILLIAM A. JOHNSON, Member

RODNEY KERSLAKE, Member