

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Snug Harbor Associates
Agent: Francine Shaw
P.O. Box 2112
Friday Harbor, 98250

File No.: PSJREV-11-0003

Request: Shoreline Permit Revision

Parcel No: 463532001

Location: 1997 Mitchell Bay Road
San Juan Island

Summary of Proposal: An application for a revision to a shoreline permit

Land Use Designation: Rural Residential 5

Public Hearing: January 11, 2012

Application Policies and Regulations: WAC 173-27-100
SJCC 18.80.110(M)

Decision: The application is approved subject to conditions.

S.J.C. COMMUNITY

FEB 15 2012

DEVELOPMENT & PLANNING

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: Snug Harbor Associates	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.
5 Shoreline Permit Revision 6 (PSJREV-11-0003)	

7 **INTRODUCTION**

8 The Applicant has applied for a revision to a 2007 approved shoreline substantial
9 development permit for the expansion of Snug Harbor Resort. The revision is
10 approved subject to conditions, including the limitation that any increases in height
11 may not exceed 10% of the maximum height approved in the 2007 shoreline permit.

12 **TESTIMONY**

13 Julie Thompson, San Juan County planner, testified that the application is a remodel
14 of an existing resort and that it is a reduction in scope of a previously adopted permit
15 application.

16 Francine Shaw, Applicant's representative, testified that the 2007 permit approval is
17 for a much bigger project than is feasible under the existing economy. In response to
18 questions from the Examiner, Ms. Shaw noted that the increase in height will be
19 consistent with applicable height limits. Parking would also increase by a handful of
20 stalls but beyond this no increase in intensity is proposed. The number of footpaths
21 will be decreased because of a decrease in accessory structures.

22 Eric Nelson testified that the new proposal involves a significant decrease in earth
23 movement. All of the proposed structures will be built into the existing topography.

24 Gerald Rasmussen, neighbor, testified that he applauds the reduction in density and
25 feels that the other issues have been well taken care of. However, he is concerned
 about vehicles and pedestrians that trespass upon his property or inadvertently drive
 past the resort and then have to turn around on his driveway. On one occasion some
 rocks were kicked onto his bedroom window by such a vehicle, chipping it. On
 another occasion a vehicle backed into his parked vehicle. He put up a gate and a no
 trespassing sign, which has stopped three quarters of the people from trespassing on
 his property. He would like to see signage that would clearly define the location of
 the resort on both the road and along the beach. He resides at the eastern terminus of
 Mitchell Bay Road. Existing signage isn't sufficient because it only directs people
 into the resort and doesn't identify when they've gone too far.

1 Francine Shaw responded that many people driving past Snug Harbor may have just
2 not realized that it's a dead end road and were not actually travelling to Snug Harbor
3 resort. Mr. Rasmussen noted that he has talked to many of the persons who have
4 driven onto his driveway and he believes that about half are persons who were trying
5 to find Snug Harbor Resort.

6 EXHIBITS

7 All exhibits identified in the "Exhibits for Snug Harbor Resort Revision", attached to
8 the 12/2/11 staff report, were admitted at hearing. In addition, the stormwater plan
9 for the proposal was admitted as Exhibit 5 at the hearing.

10 FINDINGS OF FACT

11 **Procedural:**

- 12 1. Applicant. The Applicant is Snug Harbor Associates.
- 13 2. Hearing. The Hearing Examiner conducted a hearing on the subject
14 application at 10:15 am on January 11, 2012.

15 **Substantive:**

16 3. Site and Proposal Description. The Applicant has applied for a revision to
17 a shoreline substantial development permit approved in 2007. The 2007 shoreline
18 permit authorized a replacement of all buildings that compose Snug Harbor resort
19 with 16 new vacation units, a reception area, a store/office/laundry/maintenance
20 building, a manager's cabin, a swimming pool and exercise room. The revision
21 constitutes a reduction in the extent of the expansion. The revision still requests 16
22 vacation units, but instead of 1,500 to 2,100 square feet, they will be 700 to 900
23 square feet. The existing store will still be demolished and a new store will be built in
24 the same footprint, but it will be a two-story building with the second floor containing
25 three vacation units. The total building footprint for the revision will be
approximately 13,250 square feet compared to the 32,000 square feet proposed in the
2007 application. It will also result in a 10% reduction in impervious surface due to a
reduction in proposed pedestrian paths and driveways. Overall disturbance to
vegetation and topography will be significantly reduced from the 2007 approval.
Parking will be increased from 52 to 60 stalls.

The existing resort has been in operation for over 30 years and includes a marina.
The marina is composed of a large dock with numerous floats. The resort also
includes a group camp site; a duplex, a four-plex and three park model trailers; resort
and marina amenities such as a store, showers, laundry facilities and landscaping; and
associated parking areas.

1 4. Characteristics of the Area. The neighborhood is rural and residential in
2 nature.

3 5. Adverse Impacts of Proposed Use. The only adverse impact evident from
4 the record is vehicular and pedestrian trespass onto Mr. Rasmussen's adjoining
5 private property, as detailed in the testimony section of this decision. The trespass
6 issues are not attributable to the revision, since the revision will not result in any
7 increase in density (and hence pedestrian and vehicular traffic) of the proposal. For
8 this reason, as discussed in the conclusions of law, the Applicant cannot be legally
9 required to address the situation, but some mitigation is encouraged.

10 There are no adverse impacts attributable to the proposed revision. The revision
11 results in a significant reduction in building space and a 10% reduction in impervious
12 surface with no increase in density, all for a project that was found to be fully
13 mitigated in the 2007 shoreline substantial development permit approval. The
14 revision also involves a significant decrease in alteration to topography. There has
15 been no change in circumstances since the 2007 approval that would alter the
16 potential impacts of the project and no adverse impacts are evident from the record.

17 CONCLUSIONS OF LAW

18 **Procedural:**

19 1. Authority of Hearing Examiner. Shoreline substantial development permit
20 revisions are subject to approval by the Hearing Examiner after conducting a public
21 hearing. SJCC 18.80.110(M).

22 **Substantive:**

23 2. Permit Review Criteria. SJCC 18.80.110(M)(2), quoted in italics below, governs
24 the criteria for approval of revisions to shoreline permits.

25 **SJCC 18.80.110(M)(2):** *If the hearing examiner determines that the proposed
changes are within the scope and intent of the original permit, as defined by WAC
173-27-100(2), the revision shall be granted.*

WAC 173-27-100(2): *'Within the scope and intent of the original permit' means all
of the following:*

(a) *No additional over water construction is involved except that pier, dock, or float
construction may be increased by five hundred square feet or ten percent from the
provisions of the original permit, whichever is less;*

(b) *Ground area coverage and height may be increased a maximum of ten percent
from the provisions of the original permit;*

1 (c) *The revised permit does not authorize development to exceed height, lot coverage,*
2 *setback, or any other requirements of the applicable master program except as*
3 *authorized under a variance granted as the original permit or a part thereof;*

4 (d) *Additional or revised landscaping is consistent with any conditions attached to the*
5 *original permit and with the applicable master program;*

6 (e) *The use authorized pursuant to the original permit is not changed; and*

7 (f) *No adverse environmental impact will be caused by the project revision.*

8 3. The proposed revision meets all of the criterion above. The proposed revision
9 does not involve any over-water construction and is compliant with all shoreline
10 development standards. The application materials identify that no new landscaping is
11 proposed but it is unclear whether any of the approved 2007 landscaping would be
12 revised. Revisions to existing landscaping will be addressed in the conditions of
13 approval. The proposed use remains resort, the alteration of which is authorized in
14 the Rural Residential zoning district. See SJCC 18.30.040, Table 3.2.

15 It is unclear from the record whether the proposal is consistent with WAC 173-27-
16 100(2)(b), which limits increases in height to 10%. It is unclear whether the increase
17 in height of the store from one story to two stories would be more than a 10%
18 increase in height over the height proposed for the store in the 2007 permit approval.
19 The administrative record does not identify the height of the store or any other
20 buildings proposed for the 2007 permit. The proposal will be conditioned to comply
21 with the 10% requirement. Given that the proposed revision represents an overall
22 significant reduction in bulk and dimension, the condition will be intentionally crafted
23 to provide maximum flexibility in complying with the 10% requirement.

24 As determined in Finding of Fact No. 5, there are no adverse impacts attributable to
25 the revision. The revision does not include any increase in density and nothing in the
record suggests that the decrease in building space and impervious surface would
increase trespass problems for Mr. Rasmussen. The proposal approved in 2007 could
very well create additional trespass impacts given that it did involve an increase in
density, but the code criteria specially provide, at WAC 173-27-100(2)(f), that no
environmental impacts may be caused by the "project revision". This is consistent
with the constitutional requirement that the County can only require a permit
applicant to mitigate impacts created by the proposal. *See, e.g., Burton v. Clark*
County, 91 Wn. App. 505 (1998). The conditions of approval will encourage the
Applicant to address the concerns of Mr. Rasmussen, but compliance will be
voluntary.

DECISION

The revision is approved, subject to the following conditions:

1. The site plan submitted for the revision shall become the revised site plan.
2. The Applicant shall schedule a site inspection with staff upon completion of the project to verify compliance with this decision and applicable regulations.
3. Staff shall determine whether the application for the 2007 shoreline permit approval identified the building heights for the proposal. If they did not, the height of the buildings proposed for the revision may extend up to 35 feet. If the application for the 2007 permit approval did identify building heights, none of the buildings for the revision may exceed more than 10% of the proposed height of the tallest proposed building.
4. The Applicant is encouraged to address the concerns raised by Mr. Rasmussen. To the extent consistent with County regulations, a street sign stating "Only private homes beyond this point" or similar language should be placed on Mitchell Road at the end of the Applicant's property on the side facing the Rasmussen property. Similar signage should also be placed along the shoreline or information provided to guests requesting that they respect the privacy of adjoining property owners.
5. Any revisions to the landscaping approved in the 2007 shoreline permit shall be consistent with any conditions attached to the 2007 permit and with applicable shoreline regulations.
6. The applicants shall obtain all other required permits and abide by the conditions thereof.
7. The recommendations contained in the archaeological report shall be followed.
8. A parking layout plan and landscaping plan shall be approved by the Community Development and Planning Department prior to issuing any new building permits for this project.
9. Development under this permit shall commence by December 15, 2012 and shall be substantially complete by December 15, 2015 or the permit shall become null and void, unless the Hearing Examiner approves a one-year extension.
10. Failure to comply with any terms or conditions of this permit may result in its revocation.

Dated this 14th day of February 2012.



Phil Olbrechts
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under

1 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
2 subject to review and approval by the Washington Department of Ecology pursuant to
RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

3 This land use decision is final and in accordance with Section 3.70 of the San Juan
4 County Charter. Such decisions are not subject to administrative appeal to the San
Juan County Council. See also, SJCC 2.22.100.

5 Depending on the subject matter, this decision may be appealable to the San Juan
6 County Superior Court or to the Washington State Shorelines Hearings Board. State
7 law provides short deadlines and strict procedures for appeals, and failure to timely
8 comply with filing and service requirement may result in dismissal of the appeal. See
9 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
promptly review appeal deadlines and procedural requirements and consult with a
private attorney.

10 Affected property owners may request a change in valuation for property tax purposes
11 notwithstanding any program of revaluation.
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