

S. J. C. COMMUNITY

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicants:** Brent Bauer  
2216 5<sup>th</sup> Avenue North  
Seattle, WA 98109

**Agent:** Francine Shaw  
Law Office of Stephanie O'Day  
PO Box 2112  
Friday Harbor, WA 98250

**File No:** HE22-09 (09APL001)

**Request:** Appeal of an Administrative Decision

**Location:** 286 Gunning Lane  
San Juan Island

**Parcel No:** 362043004

**Summary of Proposal:** This is an appeal of a February 2, 2009 denial of a building permit application.

**Land Use Designation:** Rural Residential

**Public Hearing:** After reviewing the report of the Community Development and Planning Department a public hearing was held on May 20, 2009.

**Applicable Policies and Regulations:** SJCC 18.50.330 Non-conforming Residences in the Shoreline  
WAC 173-27-080 Non-conforming Residences in the Shoreline  
SJCC 18.10.030 Administrative Decision Appeals

**Decision:** The February 2, 2009 building permit denial is reversed.

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DEVELOPMENT & PLANNING

### **Findings of Fact**

1. The appellant in this case, Brent Bauer, submitted building permit application No. 08-455.
2. On February 2, 2009 the building permit application was denied by Mr. Ron Henrickson under letter dated February 2, 2009. The permit denial was based upon WAC 173-27-080(7).
3. By e-mail dated February 19, 2009 Mr. Henrickson further directed that a new deck, as proposed in the building permit application, was not permitted. No reason was given for this decision.
4. A notice of appeal was properly filed on February 20, 2009.
5. A public hearing was held May 20, 2009. At that hearing a number of exhibits were introduced into the record and testimony from witnesses was submitted.
6. There is an existing single family residence on the premises. It is Mr. Bauer's request to demolish the residence and build a two-story structure with a basement.
7. The existing structure, including a deck, is measured under GPS at 2,034 square feet. Under existing San Juan County Code provisions, Mr. Bauer is entitled to a new structure no large than 2,542.5 square feet including deck space.
8. Because of the re-design and the use of a second story the proposed new foundation and deck will be smaller than, but still located within the footprint of, the existing foundation and deck.
9. The building application plans, as may have been modified by the evidence presented at the May 20, 2009 hearing, are not intended to include any habitable area within the proposed basement, but does include replacing the existing deck. The effect of replacing the existing deck would be to slightly increase the distance from the top of the bank to the front edge of the structure (house plus deck).
10. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **Conclusions of Law**

1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding.
2. Proper notice was given in compliance with local and state requirements.

3. A party appealing an administrative determination or decision has the burden of proving the determination or decision was clearly erroneous under SJCC 18.10.030(D)(4).
4. The rule found in SJCC 18.10.030(D)(3) entitling the Director's decision to substantial weight does not apply in this instance because the interpretation is not a code interpretation, but one involving WAC 173.
5. SJCC 18.10.030(D) requires the Director to prepare a written report "with findings of fact and conclusions" for the appeal hearing. In the absence of any objection the staff report dated May 18, 2009 will be considered compliance with that requirement.
6. The staff report states that the citation to WAC 173-27-080(7) in the February 2, 2009 letter relied upon a November 14, 2007 memorandum from Deputy Prosecuting Attorney Jon Cain.
7. The November 14, 2007 memorandum does not address the issue presented here. Mr. Cain's conclusion involved a factual situation where a residence was relocated in a footprint area further away from the shoreline than the previous non-conforming residence, but still within a non-conforming location. That is not the factual situation presented by this appeal.
8. The standards found in the county's shoreline Master Program under SJCC 18.50.330(D)(2)(e) does not require that the 125% of the "total existing floor area" be located exactly on the existing footprint.
9. Nothing in the language of WAC 173-27-080 would lead to the conclusion that rebuilding a non-conforming structure entirely within an existing non-conforming footprint would constitute a "move".
10. The February 19, 2009 response that a new deck was not permitted did not include any reasons or any code interpretations as a basis for the decision. In the May 18, 2009 staff report reference is made to a December 18, 2008 "note to file (author unknown)" that concluded the new house footprint (foundation) would need to cover the exiting old foundation thus making the new foundation the shoreline setback location. Thus, concludes the "note to file", there cannot be a deck built between the new house and the water. This conclusion is not based on logic nor does it contain any citations to SMP provisions or SMA provisions. As demonstrated by appellant's Ex. 15 existing building permit requirements treat the residence structure and any deck as a single unit for issuing a building permit.
11. Under SJCC 18.50.330(D)(2)(e)(i) the allowable floor area includes "all areas" within the walls of the house and all attached decks. Nowhere is there found a

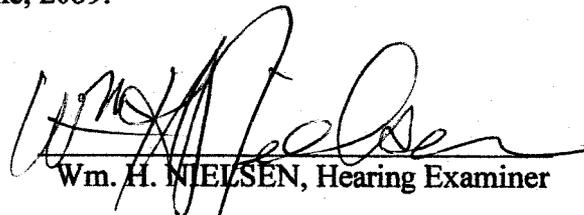
regulation that supports this December 18, 2008 "note" nor is there any regulation cited in the February 19, 2009 decision.

12. There were other factual matters that were presented at the hearing which are not part of the appeal of these issues. They will not be considered.
13. Under the facts of this case the appellant, Brent Bauer, has sustained his burden of demonstrating sufficient evidence to show that the February 2, 2009 and February 19, 2009 decisions regarding building permit application No. 08-455, were clearly erroneous.
14. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### **Decision**

The appeal is granted.

DONE this 17<sup>th</sup> day of June, 2009.

  
Wm. H. NIELSEN, Hearing Examiner

### **Appeal**

Any appeal of this decision shall be to Superior Court pursuant to the Land Use Petition Act, Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.