

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Julie and John Gottman
6806 – 52nd Ave NE
Seattle, WA 982115

Agents: Permit Resources
Teri Williams
PO Box 1001
Eastsound, WA 98245

File No: HE34-08 (08SJVar002)

Request: Shoreline Variance

Location: 547 Raccoon Point Road
Orcas Island

Parcel Nos: 170744006

Summary of Proposal: This is a request for a variance from the shoreline setback requirements to allow placement of a single family residence.

Land Use Designation: Rural residential

Shoreline Designation: Rural residential

Public Hearing: After reviewing the report of the Community Development and Planning Department public hearings were held on June 4, 18 and July 2, 2008.

Applicable Policies and Regulations: RCW 90.58 Shoreline Management Act (SMA)
SJCC 18.50 Shoreline Master Program (SMP)
SJCC 18.80.110(I) Shoreline Variance criteria
SJCC 18.60 Table 6.2 Road Setback Requirements

Decision: The application is denied.

Findings of Fact

1. The property is located in the Raccoon Point neighborhood on the east side of Orcas Island.
2. The lot is approximately 0.54 acre located entirely within the SMP jurisdiction. The area including the high bank is very steep and in some instances unstable.
3. The shoreline variance requested relief from the 50-foot setback requirement from the top of the bank. The initial geological report submitted on behalf of Mr. and Mrs. Gottman indicated that a safe building site could be placed not closer than 25 feet from the top of the bank.
4. A road adjoins the property. Under SJCC 18.60 Table 6.2 a 40-foot setback from the centerline of the road is required. Under Note 6 of that regulation the County Engineer is authorized to execute a waiver of the 40-foot requirement under certain conditions. The applicants did submit a request to Public Works for a setback reduction.
5. There were three separate hearings in this case. At the June 4, 2008 hearing a significant amount of testimony related to the road instability issue, water availability and whether the geological instability of the area in general was shown. The County Engineer was reluctant to grant the setback variance because of the claimed geological instability of the area and particularly a portion of the road if an access driveway was constructed.
6. Because of the uncertainty of the County Engineer's decision on the road setback the hearing was continued to June 18, 2008. At that hearing the testimony was submitted that the County Engineer declined to reduce the 40-foot centerline setback requirement. The result of that decision would leave the property unavailable for construction of a single family residence even with a shoreline variance. At my request, the applicant was asked to submit a letter (Ex 9) requesting hearing examiner consideration of the road variance issue as part of this case. That action was taken to attempt to avoid requiring a resubmission and duplication of time and effort. In order to facilitate consideration of the road setback variance, the case was continued again to July 2, 2008.
7. During that interim, additional evidence and a geological report were submitted on behalf of opposing neighbors. At the July 2, 2008 hearing, testimony was submitted that the administrator for the Community Development and Permit Department (CDPD) declined to issue an administrative determination regarding the road setback variance request. Because of the submission of new geological evidence by the opponent, the applicant was allowed to submit a supplemental report within one week of the close of the public hearing July 2, 2008. That material was submitted and the record was then closed.

8. The notice of hearing was published, mailed and posted on April 16, 2008.
9. The staff report is incorporated herein by reference as though fully set forth. The analysis and factual statements contained in the staff report are adopted as a finding herein.
10. Any conclusion herein which may be deemed a finding is hereby adopted as such.

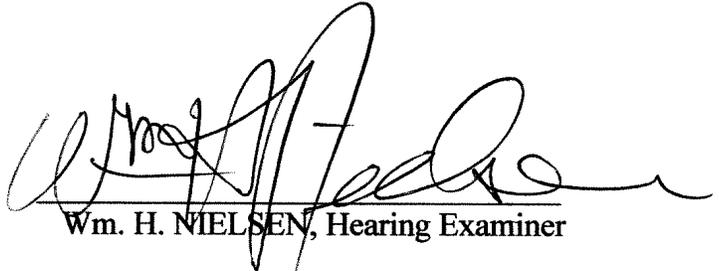
Conclusions of Law

1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding as to the shoreline variance request only.
2. Proper notice was given in compliance with local and state requirements.
3. Under WAC 197-11-800(6) a shoreline variance request is exempt from State Environmental Policy Act review.
4. Under SJCC 18.60 Table 6.2 Note 6 only the County Engineer has the authority to issue a waiver from the 40-foot from the centerline road setback requirement. There is no language in that section that authorizes an appeal from the County Engineer's decision.
5. The authority of the San Juan County Hearing Examiner is specified in SJCC 18.80.140(B). An appeal from the County Engineer's decision is not included in any of the 12 matters authorized for the Hearing Examiner. In the administrative determinations or interpretations section of SJCC 18.10.030 the administrator referred to in that section is the Director of CDPD under SJCC 18.20.010 "A" definitions.
6. There is no provision in SJCC to allow a Hearing Examiner to review the decision of the County Engineer regarding waiver of road setback requirements. Since without a road setback waiver there is no possible building envelope on the property, there is no decision that can afford relief to the Gottmans. Thus, this case is moot.
7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

Decision

The request for a shoreline variance is denied.

DONE this 4th day of August, 2008.



Wm. H. NIELSEN, Hearing Examiner

Shoreline Appeal

Any appeal of a shoreline variance shall be made to the Washington State Shoreline Hearings Board pursuant to RCW 90.58.180 and the rules adopted by said hearings board.