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Skagit County Planning and Permit Center



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**SKAGIT COUNTY PLANNING AND PERMIT CENTER
FINDINGS OF FACT**

HEARING AUTHORITY: SKAGIT COUNTY PLANNING DIRECTOR

APPLICATION NUMBER: ADMINISTRATIVE AGRICULTURAL
VARIANCE PL99-0222

APPLICANT: BOB DEAN

ADDRESS: 17219 CALHOUN ROAD
MOUNT VERNON, WA. 98273

PROJECT LOCATION: Located at 15621 Penn Road, Mount Vernon, within a portion of Section 34, Township 34N, Range 3 East W.M. Skagit County, Washington.

PROJECT DESCRIPTION: Administrative Agricultural Variance request PL99-0233 for the placement of a residential structure more than 200 feet from a county road within an area designated as agricultural.

ASSESSOR'S ACCOUNT NUMBER: 340334-4-006-0005, P22640

LEGAL DESCRIPTION: N. 990' of E. ½ of NW ¼ of SE ¼ except N. 295 of E. 110 ft.

ZONING: The parcel is located within a Agricultural zoning district.

COMPREHENSIVE PLAN: The Comprehensive Plan and associated maps adopted June 1, 1997 designates the area as Agricultural Natural Resource Land (AG-NRL).

RECOMMENDATION: The Skagit County Planning and Permit Center would recommend **approval** of this Administrative Agricultural Variance request.

STAFF FINDINGS:

1. The subject property is zoned Agricultural and the Comprehensive Plan designates the area as Agricultural Natural Resource Land as indicated in the Skagit County Comprehensive Plan and associated maps as adopted June 1, 1997. The application was determined to be complete on April 27, 1999.
2. Per Section 14.01.033 of the Skagit County Code, a letter of completeness was issued on April 27, 1999. A Notice of Development Application was posted on the subject property and published in a newspaper of general circulation on April 29, 1999 as required by Section 14.01.040(2) of Skagit County Code.
3. The application has been reviewed in accordance with the State Environmental Policy Act guidelines WAC 197-11-800 and has been found to be exempt.
4. The subject parcel was reviewed with the respect to the Skagit County Critical Areas Ordinance 14.06 of the Skagit County Code. Staff conducted a site visit on April 20, 1999 to review the parcel for saturated soils. Staff concluded that there were no critical areas located on site and recommended approval without conditions.
5. The subject property is located within a designated AO flood hazard area as identified by FEMA on Flood Insurance Rate Map (FIRM) panel number 530151 0250 C with the effective date of January 3, 1985. The applicant will be required to comply with the provisions outlined in Chapter 15.20 of the Skagit County Code, the Flood Damage Prevention Ordinance.
6. The subject parcel is approximately 12.01 acres in size located along the southeast corner of the intersection of McLean Road and Penn Road and access to the site is gained off of the east side of Penn Road. The parcel measures approximately 490 feet in width along the north property line (along McLean Road), approximately 603 feet in width along the south property line, approximately 921 feet in length along the west property line (along Penn Road), and approximately 913 feet in total length along the east property line. The east property line runs approximately 265 feet to the south from McLean Road and then jogs to the east approximately 110 feet, then turns south again and runs approximately 648 feet in length to the south property line. The parcel is currently open and under production with an active Christmas tree farm. The existing driveway enters the property off of Penn Road, approximately 500 feet from the intersection of McLean Road and Penn Road, and runs east and west along the width of the parcel (width east and west parallel McLean Road), and splits into an access road, or path, which runs north and south. The proposed building site will be located



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approximately 325 feet off of the front yard property line (Penn Road) and will setback with the rear of the structure no more than 375 feet off of the front property line. The proposed structure will be approximately 225 feet off of the south side property line, approximately 550 feet off of the north side property line, and approximately 225 feet off of the rear (east) property line. The parcel is serviced water from Public Utility District #1 and will have an individual on-site septic system.

7. The majority of the surrounding area is residential and agricultural in character. The parcel is bordered to the south by a residential development known as green acres. The road into the development is known as Green Acres Road and is lined on both sides with residential structures. The parcels to the west of this site, on the west side of Penn Road, are all residentially developed with existing structures. The parcel is bordered to the east by an open agricultural field and a small parcel with a farmhouse located along McLean Road, and the parcels to the north are made up of approximately 3 to 4 home sites with a strip of open agricultural land between the homes.
8. The applicant is requesting an Administrative Agricultural Variance to allow the placement of a residential structure more than 200' from a County Road within an Agricultural zoning district. The proposal is to construct a single family residence approximately 325 - 375 feet from Penn Road and locate the structure out of the low areas on the parcel currently being used for agricultural production as a Christmas tree farm. Skagit County Code Section 14.04.112 (5)(c)(ii) states that residential structures shall be placed at least 35 feet off of the front yard property line, at least 15 feet off of the side yard property lines and no more than 200 feet off of the front yard property line.
9. Skagit County Code Section 14.04.112 (5)(d), Siting Criteria, states the following:
 - (i) Siting of all residential development in the Agricultural District shall minimize potential impacts on the agricultural activities. Agricultural buildings should, when possible, utilize siting criteria.
 - (ii) When structures exist on adjacent properties, siting of new structures shall comply with the following:
 - (a) Locate new structure(s) adjacent to an existing compatible structure(s), sharing a common access road;
 - (b) Where the provisions of subsection (d)(ii)(a) are not practical, locate adjacent to an existing structure and minimize the length of access from the nearest existing public road;
 - (c) Where the provisions of subsection (d)(ii)(a) or (b) are not practical, site to achieve minimum distance between structures, and minimize the length of the access from the nearest existing public road.



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- (iii) When no compatible structures exist on adjacent properties, new structures shall be sited to allow future development to satisfy subsection (d)(ii) of this section
- (iv) Buildings, such as barns, stables or farm outbuildings shall be at least 20 feet from any dwelling unit on the property.

In regards to the siting criteria outlined in Skagit County Code Section 14.04.112, staff notes that there is only one structure on the parcel, an existing shed structure located in the low area near Penn Road, which is situated on a small area adjacent to the current marketable tree stock and which is also located in an area which has been proven to be historically saturated during periods of heavy rain. Based on topography, elevation, and the current agricultural use of the parcel, the proposed structure can not be located next to the existing structure on site. Staff also notes that the only location on the parcel available to locate an on-site septic system out of areas of intermittent flooding would be on the proposed home site. If the structure were to be located closer to the front property line, the septic system would need to be located on the current proposed building site which would impact agricultural activities by taking two locations on the parcel out of production instead of the one proposed site.

The applicant indicated that the residential site is located on the highest ground on the property. The trees in the area of the building site can be successfully transplanted and moving the building site closer to the Penn Road would necessitate destroying the more mature trees. The applicant further indicated that moving the building site would also remove additional land from production due to the additional fill required and separating the building site from the onsite sewage system. The proposed building site also would utilize the exiting access road that is used in conjunction with the Christmas tree business. Limited impacts to agricultural activities are foreseen.

In regards to the location of structures on adjacent properties, the applicant stated the following:

“The properties to the south are part of an old plat with access on the south side of the existing residences. The subject property has no access to the plat road. The only other adjacent residence is located on the McLean Road. Siting a new residence in this area would be in the lower portion of the property and would require substantial fill from the building site, driveway and on-site sewage system.”

10. The application was routed to the Environmental Health Unit for review. The health unit had no concerns with the proposal and indicated that normal permits will be required.
11. The application was routed to the Water Resources Division of the Skagit County Planning and Permit Center for review. In reviewing the application, Water



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Resources indicated that a letter of water availability will be required from Public Utility District #1 and that water review fees need to be assessed.

12. The application was routed to Skagit County Public Works for review. Public Works had no comments or concerns with the proposal.
13. The application was routed to the Skagit County Farmland Legacy committee (Conservation Futures Advisory Committee CFAC) for review. In reviewing the application, Conservation Futures stated the following:

“The Conservation Futures Advisory Committee (CFAC) reviewed the above variance permit during its April 20, 1999 meeting and unanimously agreed not to recommend approval of the application. Members of the CFAC did not see sufficient justification in the application to justify a variance from the setback and siting criteria listed in 14.04.112, Agricultural Natural Resource Land. The Committee suggested allowing the residence to be constructed within 200 feet of Penn Rd. and adjacent to an existing structure on the neighboring property.”

“It is important to remember that single family dwellings in the Ag-NRL zone are an accessory use. The primary use is for the agricultural production not residential uses. The setback and siting criteria are designed to minimize the impact of accessory uses to the continued use of the land for agriculture.”

“In our review of the application and property, we found no reason that applying provisions of Chapter 14.04 would deprive the applicant of rights commonly enjoyed by other properties in the district. While “historically” farmhouses were located on higher ground, the applicable standard is not from the turn of the century but current zoning standards. The majority of properties now must adhere to the setback and siting criteria. The land next to Penn Road is higher than along McLean Road and suitable for placing a residence without substantial fill. The loss of several larger conifer trees is more than offset by the retention of more land in agricultural production.”

“Section 14.04.112 (5)(d)(ii)(b) requires new structures to be located adjacent to an existing structures and mandates efforts to minimize the access road to the nearest existing public road. Requiring the applicant to meet these siting criteria will again maximize the area of land in production and minimize the conversion of productive farmland.”

14. Section 14.04.223 (1) (e) Variances of the Skagit County Code states that certain items will be reviewed when approving or denying Variances. Staff comments as they relate to the Variance criteria are as follows:
 - a. *That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.*



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Staff recognizes that special conditions and circumstances generally apply to topographic hardships, i.e., a large ditch or creek or other physical feature peculiar to a particular parcel of property, that has a detrimental impact on a proposed development. The parcel is approximately 12 acres in size currently being used as a Christmas tree farm. The topography of the parcel is such that the majority of the land is low and becomes heavily saturated during extensive periods of rain. This is apparent when reviewing historical aerial photos. Staff notes that the parcel is extremely low along McLean Road and remains low as it runs south along Penn Road. Based on elevations provided by the applicant, the highest portion of the parcel is just south of the existing access road, along the eastern portion of the parcel. Historically, farmhouses have located on the highest portion of a parcel possible to minimize the impact on their structure during a flood event, as well as to minimize the impact to other parcels during a flood event. By locating on a historically low, flooded portion of a parcel will only cause the applicant to bring in fill to raise the level of the structure, which in turn pushes more water onto adjacent properties during a flood event or periods of heavy rains and saturated soils. The special condition exists because of the topography, current use of the parcel, and the historical siting of residential structures on agricultural lands.

The applicant has indicated that a lot certification was issued in 1994. The applicant is proposing to locate the residential structure approximately 375 feet east of Penn Road and will be using the existing driveway utilized as part of the Christmas tree farm that has been in operation since 1989. The applicant has indicated that the proposed building site is on the highest portion of the property with the remainder of the property subject to intermittent flooding. The applicant stated that the high ground on the property provides the only building site on the property that would not be subject to intermittent flooding and provides the logical area for the on-site sewage system. Locating the building site closer to the Penn Road would necessitate removal of the larger Christmas trees that are of sufficient size that precludes transplanting. The applicant indicated that the trees in the area of the proposed building site area young enough that transplanting would be successful. Location within 200 feet of the Penn Road would also require substantial fill since the area is lower.

- b. *That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.*

Staff notes that the literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter. Staff notes that the parcel is surrounded all sides by residential development except a 648 foot area of the east boundary of the parcel which borders a strip of agricultural land on an adjacent parcel.



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The applicant has indicated that historically, farm homes have been located on the highest ground available. The proposed site would be consistent with past practices in the agricultural area by reducing the potential negative impact of flooding.

- c. *That the special conditions and circumstances do not result from the actions of the applicant.*

The applicant has indicated that the conditions did not result from their actions..

Staff notes that the special conditions and circumstances did not result from the actions of the applicant. The majority of the parcel is low ground which becomes heavily saturated during the winter months.

- d. *The granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, buildings in the same district.*

The applicant has indicated that it is considered as best management practices to locate the residence, in the farm community, on a site that is the highest portion of the property with the least impact on the agricultural use. Granting of the variance would only recognize the previous practices in the farm community along with the least impact to the farm land.

Staff notes that the granting of the variance request will not confer a special privilege to the applicant because the home site is proposed to be located on the highest portion of the parcel which has been historical past practice. Also, the proposed location will cause the least amount of impact on the existing agricultural activity taking place on site. The proposed area on the parcel contains smaller tree stock that can more easily be transplanted with a higher success rate than the larger stock which is located in the area within 200 feet of Penn Road.

DECISION

The Director hereby **approves** of the requested Administrative Agricultural Variance with the following conditions.

1. Applicant shall obtain all permits and approvals from the appropriate jurisdiction.
2. Water review fees will need to be paid, at current rate, at the time of building permit review.



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3. The applicant shall provide a letter from PUD #1 indicating water availability to the site, prior to the approval of a building permit.

The applicant and/or party of record may appeal the decision of the Administrative Official to the Skagit County Hearing Examiner pursuant to the provisions of Section 14.01.060. Every appeal to the Hearing Examiner shall be filed with the Planning and Permit Center within fifteen (15) calendar days after the date of the decision.


Kendra Smith, Assistant Director


Brandon Black, Assistant Planner

Date of Preliminary Approval: 7-23-99

Date of Final Approval: 8-10-99

Prepared By: BB

Approved By:



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