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Kathy Hill, Skagit County Auditor
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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: RECOMMENDATION ON AGRICULTURAL VARIANCE AV 99 0696

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: HERALD CATLIN

ASSESSOR PARCEL NO: P37032

ABBREVIATED LEGAL DESCRIPTION: located at 20740 Cook Road, Burlington, WA;
within Section 21, Township 35 North, Range 04 East, W.M., Skagit County,
Washington.

17835

RESOLUTION NO. _____

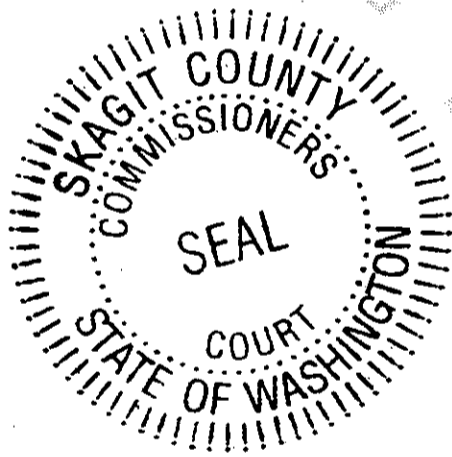
A RESOLUTION APPROVING AN AGRICULTURAL VARIANCE
FOR HERALD CATLIN
AV 99 0696

WHEREAS, the Skagit County Hearing Examiner held a public hearing on March 8, 2000 to review the application for an Agricultural Variance of HERALD CATLIN and adopted Findings of Fact and a Recommendation which were submitted to the Board of Skagit County Commissioners; and,

WHEREAS, The Board of Skagit County Commissioners has reviewed the Findings and Recommendation of the Hearing Examiner in this matter and concurs with these Findings and Recommendation; now therefore,

BE IT RESOLVED that the Board of Skagit County Commissioners hereby adopts the Findings and Recommendation of the Hearing Examiner and approves the Agricultural Variance request of HERALD CATLIN subject to the conditions of approval listed in the Recommendation.

WITNESS our hands and official seal this 10TH day of April, 2000.



BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Harvey Wolden
HARVEY WOLDEN, Chairman

Robert Hart
ROBERT HART, Commissioner

Ted W Anderson
TED W. ANDERSON, Commissioner

ATTEST:

Patti Chambers
Patti Chambers
Clerk of the Board



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**SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON**

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In the matter of the Application of:)	
HERALD CATLIN)	AV 99-0696
)	
For a Variance to allow deviation from)	Findings of Fact,
the 35-foot Front Yard Setback As a)	Conclusions of Law
Result of Cook Road Improvement Project)	and Recommendation
)	

THIS MATTER relates to an application for a variance by Herald Catlin. The application came on for hearing on March 8, 2000, after due notice. The Skagit County Planning and Permit Center was represented by Brandon Black. Members of the public were given an opportunity to be heard.

Testimony was taken, exhibits were admitted and argument was made. On the basis thereof, the following is entered:

FINDINGS OF FACT

1. The Skagit County Public Works Department has submitted this application on behalf of Herald Catlin (applicant). The application seeks a variance from the 35-foot front yard setback for Mr. Catlin's property at 20740 Cook Road. The Cook Road improvement project will widen the south side of the right-of-way, placing existing structures within the setback. The request is to establish the legal setback for any future development at the setback line created by the road widening.

2. The property is about 5.52 acres in size and measures approximately 600 feet in width along the north and south property lines and approximately 375 feet in length along the east and west property lines. It is located along the south side of Cook Road, Burlington within the NW ¼ of the SE ¼, Sec.21, T35N, R4E, WM.

3. The existing residence is currently set back 52 feet from Cook Road. With the completion of the road widening project, the structure on the site will be set back 32 feet off of Cook Road.

4. The surrounding area is primarily agricultural land. The property is flat and level abutting large agricultural fields. The surrounding land use is agricultural with dairying and cropping. The subject property has a land use designated as Open Space Farm and Agricultural.

5. Under SCC 14.04.223, variances are authorized in specific cases where departure from the requirements of the zoning code "will not be contrary to the public interest" and



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“where, owing to special conditions, a literal enforcement of the provision of this chapter would result in unnecessary hardship.” The explicit criteria for approval of a variance are:

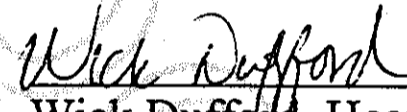
- a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure, or buildings in the same district.
 - b. The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.
 - c. That the special conditions and circumstances do not result from the actions of the applicant.
 - 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 or buildings in the same district.
6. The Staff Report accurately describes the project, the setting and the criteria for approval. The Examiner adopts the findings and analysis of that report, a copy of which is attached.
7. The roadway project will provide improvements to approximately 3.7 miles of Cook Road. The road will be surfaced with asphalt pavement and expanded to a uniform width of 40 feet, consisting of two 12-foot driving lanes and two 8-foot shoulders. The project will require right-of-way acquisition from adjacent owners. The purchase of right-of-way will decrease the setback for a number of long established private residences and accessory structures. The encroachment into the setback will result solely from the public project.
8. The application is not requesting any construction permits at present. The subject variance will simply allow any expansion or addition that may be requested in the future, so long as the 25-foot setback line created by the road widening is met.
9. The improvement project will correct a substandard roadway, enhance safety, and improve traffic flow and level of service. Consulted departments had no adverse comments on the variance proposal. No persons testified in opposition. The file contains no letters of concern.
10. The Examiner finds that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum necessary to make possible reasonable use of the land. The granting of the variance will be in harmony with the general purpose and intent of the zoning ordinance and will not be injurious to the neighborhood or otherwise detrimental to public welfare.
11. Any conclusion herein, which may be deemed a finding, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over the parties and subject matter of this proceeding.
2. The proposal is exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(6).
3. The proposed 32-foot front yard setback will meet the approval criteria of SCC14.04.223, if the following conditions are imposed and complied with:
 - (1) Prior to any construction the applicant shall obtain all required approvals from the appropriate jurisdictions.
 - (2) The applicant shall obtain building permits before starting any construction.
4. Any finding herein, which may be deemed a conclusion, is hereby adopted as such.

RECOMMENDATION

The Hearing Examiner recommends that the variance be granted, subject to the conditions set forth in Conclusion 3 above.



Wick Dufford, Hearing Examiner

Date of Action: March 22, 2000

Copies transmitted to Applicant: March 22, 2000



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

17835

HEARING AUTHORITY: SKAGIT COUNTY HEARING EXAMINER

HEARING DATE: MARCH 8, 2000

APPLICATION NUMBER: VARIANCE REQUEST PL99-0696

APPLICANT: HERALD CATLIN

ADDRESS: 20740 COOK ROAD
BURLINGTON, WA. 98233

PROJECT LOCATION: Located at 20740 Cook Road, Burlington, within a portion of Section 21, Township 35N, Range 4 East W.M. Skagit County, Washington.

PROJECT DESCRIPTION: Variance request #PL99-0696 from 14.04.112 (5)(c)(ii) of the Skagit County Code for the purpose of deviating from the minimum required 35 foot setback requirement off of the front yard property line. With the completion of the Cook Road improvement project, the right-of-way will be widened to the south of Cook Road, in this area. This road widening will reduce the front yard setback of the existing residence from the current 52 foot setback, to a 32 foot setback. The variance request will relieve the applicant from the front yard setback requirement in the future. Future expansion of the structure will not require a front yard setback variance provided that any expansion/addition can meet the other current setback requirements and that said addition does not extend further into the front yard setback area.

ASSESSOR'S ACCOUNT NUMBER: 350421-4-002-0000, P37032

ZONING: The subject parcel is located within an Agricultural zoning district.

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

LEGAL DESCRIPTION: The North 400 feet of the East 600 feet of the Northwest ¼ of the Southeast ¼ of Section 21, Township 35 North, Range 4 East, W.M., County of Skagit, State of Washington.

EXCEPT the North 25 feet thereof conveyed to Skagit County for road purposed by Deed recorded April 25, 1894 in Volume 29 of Deeds, page 553, and by Deed recorded June 28, 1972, under Auditor's file No. 770332, records of Skagit County, Washington.



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RECOMMENDATION: The Skagit County Planning and Permit Center would recommend approval of the requested variance.

EXHIBITS:

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1. Staff report and Staff Findings 1 – 13
2. Application received December 9, 1999
3. Assessor's Section Map
4. Letter of Completeness dated December 28, 1999
5. Notice of Development published December 30, 1999
6. Site Plan

STAFF FINDINGS:

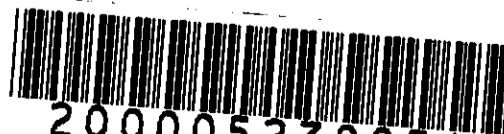
1. The subject property is zoned Agricultural and the Comprehensive Plan and associated maps adopted June 1, 1997 designates the area as Agricultural Natural Resource Land (Ag-NRL). A letter of completeness was issued as per Section 14.01.033 (1) of the Skagit County Code and the application was determined to be complete on December 28, 1999.
2. A Notice of Development Application was posted on the subject property and published in a newspaper of general circulation on December 30, 1999 as required by Section 14.01.040(2) of Skagit County Code. The public hearing has been advertised in accordance with the requirements of Chapter 14.01.042 and 14.04 of the Skagit County Code.
3. The application has been reviewed in accordance with the State Environmental Policy Act guidelines WAC 197-11-800 (6)(b) 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 December 28, 1999 and determined that there were no critical areas on site. Critical Areas Staff recommended approval without conditions.
5. The subject property is located in a A7 designated flood hazard area as identified by FEMA on Flood Insurance Rate Map (FIRM) panel #530151 0235 D with the effective date of September 29, 1989.
6. The subject property is approximately 5.52 acres in size located along the south side of Cook Road, Burlington. The subject parcel measures approximately 600 feet in width along the north and south property lines and approximately 375 feet in length along the east and west property lines. The site is accessed by a private driveway off of Cook Road. The existing residence is currently located approximately 52 feet off of the front yard property line. With the completion of the Cook Road improvement project the setback of the structure on site will be



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- reduced to 32 feet off of Cook Road. The parcel is currently serviced by water from an individual drilled well and has an existing on site septic system.
7. The surrounding area is agricultural in nature. The property is flat and level surrounded by large agricultural fields. The surrounding land use is agricultural with dairying and cropping and the subject lot has the land use listed as Open Space Farm and Agricultural.
 8. The applicant is requesting a variance from Skagit County Code 14.04.112 (5) (c) (ii) to deviate from the minimum required 35 foot setback requirement off of the front yard property line. With the completion of the Cook Road improvement project, the right-of-way will be widened to the south of Cook Road, in this area, which will reduce the front yard setback of the existing residence on site from its current 52 foot setback, to a 32 foot setback. This variance request, if approved, will allow the structure on site to be expanded in the future, provided that any expansion/addition can meet current setback requirements on the given parcel and not extend any further into the front yard setback area.
 9. The application was reviewed by the Skagit County Department of Public Works. Public Works had no comments or concerns with the proposal and recommended approval.
 10. The application was routed to Skagit County Environmental Health Specialist for review. Environmental Health had no concerns with the proposal.
 11. The application was routed to the Water Resources division of the Skagit County Planning and Permit Center. Water Resources comments are as follows: "The application for P199-0696, a variance requested on behalf of Herald and Dyan Catlin to reduce the front yard setback to existing structures to 32', includes a plot plan which shows the potable water source as a drilled well located 75 feet from the roadway after expansion. This setback should not greatly increase the potential from contamination from activities on the roadway over the original setback, provided drainage off the roadway is not altered to increase run-off into the area of the well. Another well, a driven point, is noted as "not used for drinking". Based upon this information we have no objection to approval."
 12. The application was routed to the Skagit County Building Official for review. The Building Official had no concerns with the proposal and indicated that there were no problems with building or fire codes.
 13. 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.*

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. This parcel is level and flat and contains no topographical hardship and, in this case, the property owner is not requesting construction permits at this time. This variance request is the result of a road widening project that is scheduled to begin in the Summer of 2000. The Skagit County Public Works Department is planning to improve Cook Road from Green Road, east to Sedro Woolley city limits. Public Works has indicated that the project has been listed on the County's Six-Year Transportation Improvement Program since 1990.

Public Works has indicated that the project will provide roadway improvements to approximately 3.7 miles of Cook road. The road will be surfaced with asphalt pavement and expanded to a uniform width of 40-feet consisting of two 12-foot driving lanes and two 8-foot shoulders. This project will require right-of-way acquisition from adjacent property owners and relocation of some existing utilities. Right-of-way will be added to the southerly side of the corridor, except at the project limits where the alignment will match existing centerlines. At these locations, right-of-way will be acquired from both the north and south sides. This project will correct a substandard roadway structure, provide safety enhancements, and improve traffic flow and level of service.

The applicant further indicated that the right-of way necessary for the Cook Road Improvement Project must be purchased adjacent to the existing roadway. The purchase of this right-of-way line by Skagit County will decrease the setback distances between the right-of-way line and a number of private structures. These are residences long established and typical to the area. The condition requiring the variances is not caused by the property owners themselves and would constitute an unfair hardship if any of these owners were to apply for a building permit to add on to a structure in the future. At the time of future application the structure would be a nonconforming structure due to the road widening and a variance would be required.

- 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. The use of this site is not changing and many other structures along the roadway will not be impacted by the road



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improvement project. After the completion of the project, the applicant will be deprived of the same rights as the other property owners in the area that were not impacted due to new road alignment. The improvement project will reduce the current setbacks of the structure on site and create the situation that makes the structure not able to conform to current setback requirements. The circumstances clearly indicate that the literal interpretation of the front setback provisions of this chapter, in the future, would deprive the applicant of rights commonly enjoyed by other properties in the same district.

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

Staff notes that the special conditions and circumstances will not result from the actions of the applicant. The structures on site currently comply with the setbacks requirements outlined in Skagit County Code Section 14.04.112 (c). With the completion of the Cook Road Improvement Project, the road will be widened to the south in this area and will reduce the setback of the structures from the existing 52 feet, to 32 feet off of the property line. The road improvement will make the existing structures nonconforming with current Skagit County Code and will not be a result from the actions of the applicant.

- 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 granting of this variance request will not confer a special privilege that is denied by this chapter to other lands or structures in the same district. The intent of this request is to allow the property owner the same privileges after the completion of the road project, that currently exist today. There are several other structures that will be impacted by this project, and all impacted property owners are being given the same opportunity to request a variance from the front yard setback requirements for future expansion/additions that will not extend further into the front yard and that can meet all other setback requirements on the given parcel. The remaining structures along Cook Road will not be impacted by the improvement project and therefore will not be made to be nonconforming upon completion of the road work.

Staff notes that the proposal is to allow the property owner the opportunity to expand the existing structures in the future, if they wish, without the burden of requesting a variance at that time, as long as any addition/expansion can comply with current setback requirements and is not extending further into the front yard. The road improvement project itself will be creating the nonconformity and the applicant is requesting to not be denied the future right to expand that currently exists today.



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RECOMMENDATION:

Based on the current code the Planning and Permit Center would recommend approval of the requested variance with the following conditions:

1. The applicant shall obtain all permits and approvals from the appropriate jurisdiction(s).
2. The applicant shall obtain building permits prior to the start of any construction.
3. The applicant shall not add on to/expand the structure toward the front yard property line.

Prepared by: BB
Approved by:

Dated: 2-17-00



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