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, 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: VARIANCE VA 00 0065

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: DAN and DEANN MILLS

ASSESSOR PARCEL NO: P23351

ABBREVIATED LEGAL DESCRIPTION: located at 23562 Mud Lake Road, Clear Lake,
WA; within the NW 1/4 of the SE 1/4 of Section 1 Township 34 North, Range 4 East,
W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
DAN AND DEANN MILLS)	VA00-0065
)	
For a Variance from the Residential)	Findings of Fact,
Setbacks for the Placement of a Mobile)	Conclusions of Law,
Home on an Undersized Lot, at 23562)	And Decision
Mud Lake Road in Clear Lake)	
)	

THIS MATTER, an application for a variance from setbacks, came on regularly for hearing on July 12, 2000. Marge Swint appeared for the Planning and Permit Center. Greg Gelensye testified concerning septic system adequacy. Dan Mills represented himself. Members of the public were given an opportunity to be heard.

Testimony was taken, exhibits were admitted and argument was made. The record was left open for a week after the hearing for responses to late-arriving public comment letters. The Examiner visited the site. On the basis the record, the following is entered:

FINDINGS OF FACT

1. Dan and DeAnn Mills (applicants) seek to place a mobile home on a small lot in the rural village of Clear Lake.
2. The subject property is located at 23562 Mud Lake Road, within a portion of the NW1/4SE1/4, Sec. 1, T34N, R4E, W.M. The zoning is Residential.
3. The lot is approximately 3280.5 square feet (.07-acre) in size and triangular in shape. The north end of the triangle is at the intersection of Mud Lake Road and Fir Avenue. The easterly leg runs about 81 feet along Fir Avenue. The westerly leg runs approximately 109 feet along Mud Lake Road. The base is a line about 81 feet long between the two roads.
4. As shown on the applicants' site plan, the lot is bordered by approximately 15 feet of County right-of-way along Mud Lake Road and approximately 8 feet of County right-of-way along Fir Avenue.
5. About 100 feet to the east of Fir Avenue and running roughly parallel to it is State Route 9. The space between the two roads is an abandoned railroad right-of-way which is now used as a parking area. On the east side of State Route 9 is the commercial area of Clear Lake.

6. The west side of Fir Avenue is devoted to residential development. The homes are older, modest in size, and located on relatively narrow lots. Many do not meet today's setback requirements.

7. At the present time, the subject property and adjacent rights-of-way are undeveloped and grass covered. Recently the area has been used for parking cars. There was once a house on the lot, but it was removed in 1982. The applicants have obtained a lot certification from the Planning Director.

8. The applicants are the daughter and son-in-law of the property owner who lives on the adjoining parcel to the south. She acquired the lot in 1976 when there was still a house on it. This was prior to the adoption of current setback requirements. The house was removed because it was run down and had become an eyesore. The lumber was used to rebuild a house elsewhere that had burned down.

9. Under Skagit County Code (SCC) 14.04.090, the applicable setbacks for a primary structure in a Residential District are: Front - 35 feet (25 feet on minor access or dead-end street); Side - 8 feet on interior lots and 20 feet on corner lots; Rear - 25 feet.

10. On triangular parcels, the Planning Department has determined the front property line to be the one with driveway access. The other lines are considered the sides. The Staff Report states that the rear property line is a radius between the two sidelines.

11. The applicants want to place a 40' x 27' 4" (1093 square feet) mobile home on the subject lot. They state that this is the smallest size available. At its closest point, this mobile home would be located approximately two feet from the existing right of way for Mud Lake Road. This would leave it 17 feet from the edge of the paved surface of Mud Lake Road. On the Fir Avenue side, the mobile home would be about 18 inches from the right of way line or about 9.5 feet from the edge of the asphalt. The mobile home would be about eight feet from the south property line. The placement would be approximately where the prior house was located.

12. The plans show a parking strip off of Fir Avenue along the south property line. The septic tank would be in the area north of the proposed mobile home and the drainfield would be installed in an area to the west of it. Additional parking off of Mud Lake Road is shown in the reserve septic area.

13. The setback of the septic system would be only about two feet from the property line, but the testimony was that this could be administratively approved on the condition that monitoring be conducted of the underground water connection between Mud and Clear Lakes. The groundwater in question is believed to be safely below the proposed drainfield. In addition, parking over the reserve septic area, while not considered ideal, would not be rejected so long as the surface is not paved.

14. The Department of Public Works did not object to the proposal , but noted that compliance with requirements for vision clearance on a corner lot will need to be demonstrated. The applicants are convinced that this can be shown. The proposed placement would leave a triangular open space. roughly 48' by 38' by 30' at the north end of the property where Mud Lake Road and Fir Avenue intersect. There is an existing stop sign at the intersection for traffic on Fir Avenue.

15. Several letters from property owners in the area were received. They raised concerns about the septic system, possible flooding in the area, the small setbacks, traffic impacts, parking, vision clearance and setting a precedent.

16. 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 "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, structures, 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.

17. The subject property is a legal lot. The special circumstance involved is the small size of the parcel. In most situations, persons have the right to build residences on legal lots within a Residential District. It does not appear possible make residential use of this lot consistent with the standard setbacks. The lot size is not the result of the action of the applicant.

18. In order to avoid conferring a special privilege, relevant health and safety concerns about the proposed residence must be resolved. The main issues raised in this regard are flooding, water quality and traffic. These can probably be adequately addressed through the imposition of conditions.

19. The property is located within a designated flood hazard area (Zone A-8). The evidence is that the last major flood in the vicinity did not reach this parcel. In any



case, a residence on the property would be required by the Flood Damage Prevention Ordinance to have the lowest floor elevated one foot or more above the base flood elevation.

20. On the basis of the evidence, the on-site sewage disposal system does not appear likely to cause water pollution. The possibility of it doing so can be covered by an appropriate monitoring condition.

21. Traffic along Mud Lake Road has increased substantially since the previous home on the property was removed. That road is a well-traveled connector between Mount Vernon and Sedro Woolley. Conditions could be fashioned requiring that vision clearance be shown to be adequate to the satisfaction of technical reviewers, that parking should at no time to be allowed along the rights-of-way that border the property and that during construction great care be taken to insure that equipment does not become a hazard to traffic.

23. However, even if conditions of approval can appropriately resolve the health and safety concerns raised, the Examiner is concerned that the departure from the setback standards sought is too extreme. The mobile home, as proposed, will be significantly closer to the road than any existing nearby houses -- and this closeness will occur near a busy intersection. What if it should be necessary in the future to widen the pavement -- particularly along the well-traveled Mud Lake Road?

24. The application seeks to shoehorn a house onto a lot that is substantially below the size needed to accommodate reasonable setbacks. Eighteen inches and two feet are practically no setbacks at all. The result would provide a troublesome precedent for future cases where extreme departures from the established setbacks are requested.

25. The Examiner has not been shown that no other reasonable use of this property other than residential development is possible.

26. 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 parties and the subject matter of this proceeding. SCC 14.04.223.

2. The application is exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(6)(b).

3. Under all the facts and circumstances, the Examiner concludes that the approval of a reduction in setbacks to the extent sought would constitute a grant of special privilege that is denied to other lands, structures or buildings in the same district.



See SCC 14.04.223(1)(f)(iv). As a precedent, the result would be contrary to the public interest.

4. In this situation the Examiner has been unable to make the required finding that the proposal is the "minimum variance that will make possible the reasonable use of land, building or structure." SCC 14.04.223(3)(a).

5. Therefore, the Examiner concludes that the requirements for approval of a variance have not been met by this application.

6. The Code provisions on nonconforming uses, structures and lots do not dictate a different result. SCC 14.04.270(2) allows for the building of residences on a non-conforming lot so long as the lot is of separate ownership and not of continuous frontage with other lots in the same ownership. The separate ownership requirement is not met here. Further, absent a variance, compliance with the standard yard requirements is mandated. Thus, a variance would be needed here even if the ownership were separate.

7. The prior existence of a house on the lot does not help either. The previous house would not have been conforming as to modern setbacks. If a non-conforming building ceases to exist for a period of a year or more, any future building must conform with the requirements for the zone. SCC 14.04.270(4).

DECISION

The requested variance is denied.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: August 21, 2000.

Copy transmitted to Applicants: August 21, 2000.

RECONSIDERATION/APPEAL

This decision shall become final unless a request for reconsideration or appeal is filed. A request for reconsideration shall be filed with the Hearing Examiner within ten (10) day from the date of this decision. An appeal to the Board of County Commissioners shall be filed with the Planning and Permit Center within fourteen (14) days from the date of this decision, or if reconsideration has been requested, within fourteen (14) days from the decision after reconsideration.

