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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: SPECIAL USE APPLICATION SU 00 0456 and VARIANCE
APPLICATION VA 00 0303

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: SHIRLEY HALEY

ASSESSOR PARCEL NO: P74687

ABBREVIATED LEGAL DESCRIPTION: located at 18324 S. Westview Road, Mount
Vernon, WA; within the NW $\frac{1}{4}$ of Section 6, Township 33 North, Range 5 East, W.M.,
Skagit County, Washington.

6. The property slopes gently from east to west and is landscaped with ornamental plants, native vegetation and several trees. All normal utilities and public facilities, including public sewer and water, serve the property.

7. The construction proposal is to wall-in both of the carports and to add 528 square feet. This would create a 360 square foot garage and a new living space of 988 square feet. A portion of this new living space would be used for the piano lessons. The applicant currently gives piano lessons in Burlington.

8. The applicable setbacks are: front -- 35 feet (25 feet on a minor access road); side -- 8 feet; and shoreline -- 50 feet from OHWM. The existing house is far exceeds the shore setback and the remodel would not bring the house closer to the water. The project would not encroach into the side and front setbacks any closer than the existing house does. However, on the south side, the remodel would increase the area that encroaches one foot into the setback.

9. The change in non-conformity created by the enlargement of the house would be minimal and virtually without impact to adjacent properties. A number of neighbors wrote letters about this proposal. All of them supported it. There was no opposition at the hearing or otherwise.

10. The shoreline of Big Lake is densely developed for residential use. In the pattern of development (much of it predating the code), deviations from the standard setbacks are common.

11. A Fish and Wildlife Assessment was prepared for this project by Graham Bunting and Associates. The assessment found little likely impact from this development, but noted that removal of shoreline vegetation, bulkheading and structural encroachment has occurred along Big Lake. The report recommended the creation of a Protected Critical Area (PCA) in the area extending landward 35 feet from the OHWM. Because the vegetation communities adjacent to the OHWM on this parcel remain intact, no planting program was proposed.

12. 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 provisions 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.

13. The Staff Report analyzes the variance proposal here under these criteria and finds that it meets them. The Examiner concurs in this analysis and adopts the same.

14. The reasons set forth in the application justify the granting of the variance. It is the minimum needed in furtherance of a reasonable use of the property. Granting the variance will be in harmony with the general purpose and intent of the zoning code and will not be injurious to the neighborhood or otherwise detrimental to public welfare.

15. Because the requested home occupation involves clients coming to the site, it must be approved as a special use. Under SCC 14.04.030(40), relevant limitations on such home occupations areas are defined as follows:

(a) Is carried on by a member or members of a family residing in the dwelling and may include up to three (3) additional employees;

(b) Is clearly incidental and secondary to the use of the property for dwelling purposes;

...

(d) Has no outside storage nor other exterior indication of the home occupation or variation from the residential character of the property with the exception of one sign not to exceed four (4) square feet, provided such sign shall not be illuminated;

(e) Does not create a level of electrical interference, line voltage fluctuation, noise, vibration, smoke, dust, odors, heat, glare, traffic and other environmental impacts beyond that which is common to a residential area.

(f) Does not create a level of parking demand beyond that which is normal to a residential area.

16. As proposed, the home occupation would be consistent with the restrictions of this definition. The traffic created would not exceed that of a normal residence. There is adequate parking space to meet the demands. Sounds from the activity would probably not be audible beyond the property because of the buffering of walls and vegetation and the placement of windows on the lake side only.

17. SCC 14.04.150(3)(d) requires consideration of the following elements in evaluating a special use application.



- (i) Conformity to the Comprehensive Plan in respect to the compatibility with existing and future land use and circulation;
- (ii) The zoning of the subject property and surrounding properties and the conformance of the application to the zoning ordinance;
- (iii) Automobile or truck traffic and parking and its effect on surrounding community;
- (iv) Noise, odors, heat, vibration, air and water pollution potential of the proposed use;
- (v) Intrusion of privacy;
- (vi) Design of site and structures as to possible effects on the neighborhood;
- (vii) In addition to possible effects on the neighborhood in which the use is to be located, the potential effects on the region shall be considered;
- (viii) Potential effects regarding the general public health, safety and general welfare.

18. The Staff Report analyzes the special use sought here against these criteria and finds that, as conditioned, it meets them. The Examiner concurs in this analysis and adopts the same.

19. 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 14.04.150, 14.04.223.

2. The proposed variance is exempt from the procedural requirements of the State Environmental Policy Act (SEPA). WAC 197-11-800(6)(b). As to the Special Use, these requirements were satisfied by the issuance of a Determination of Non-Significance (DNS).

3. SCC 14.04.270(3) disallows the enlargement or alteration of an existing non-conforming building. Accordingly, structural changes such as those sought here must be approved, if at all, by obtaining a variance from the dimensional standards of the zoning code.

4. If conditioned as set forth below, the proposal will meet the requirements for approval of a Variance Permit and a Special Use Permit.

5. The following conditions shall be imposed:



- (a) The project shall be constructed as shown on the plans and project information submitted with the application.
- (b) The permittee shall obtain all other necessary approvals (e.g., building permit).
- (c) All vehicles of piano students shall be required to park on the subject property and not within the right-of-way on South Westview Road.
- (d) Prior to issuance of any building permit, a Protective Critical Area Site Plan (See Attachment C, Fish and Wildlife Site Assessment, September 5, 2000) shall be recorded for the property at the County Auditor's Office and the Planning and Permit Center shall be so advised.
- (e) The Special Use shall be conducted in conformance with the limitations set forth in SCC 14.04.030(40).
- (f) The Special Use shall be void if not started within one year of the date of this decision.

6. Any finding which may be deemed a conclusion is hereby adopted as such.

DECISION

The requested Variance Permit and Special Use Permit are approved, subject to the conditions set forth in Conclusion 5 above.


Wick Dufford, Hearing Examiner

Date of Action: November 28, 2000.

Copy transmitted to Applicant: November 28, 2000

Attachment: Staff Report

RECONSIDERATION/APPEAL

A request for reconsideration may be filed as provided in SCC 14.06.180. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the Examiner's decision, or decision on reconsideration if applicable.



SKAGIT COUNTY PLANNING & PERMIT CENTER

FINDINGS OF FACT

HEARING AUTHORITY: SKAGIT COUNTY HEARING EXAMINER

HEARING DATE: November 8, 2000

APPLICATION NUMBER: Variance Request PL00-0303
Special Use Request PL00-00456

APPLICANT: Shirley Haley

ADDRESS: 18324 S. Westview Rd.
Mount Vernon, Wa 98274

CONTACT: Linda & Greg Wilson
17279 Dike Road
Mount Vernon, WA 98273

PROJECT LOCATION: The proposed project is located at 18324 S. Westview Rd., Mount Vernon, WA: N ½ Lot 22, Lot 23, & S ½ Lot 24 of the Plat of the Town of Montborne; within a portion of the NW ¼ Section 06, Township 33 North, Range 05 East, W.M., Skagit County, Wa.

PROJECT DESCRIPTION: The Variance Request is to allow for the alteration and enlargement of a preexisting nonconforming residence. The Special Use Request is for a home occupation to allow for private piano lessons within her residence.

ASSESSOR'S ACCOUNT NUMBER: 4135-042-024-0004

P# Number: P74687

ZONING: Residential

COMPREHENSIVE PLAN: Rural Village



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RECOMMENDATION: The Planning and Permit Center recommends **APPROVAL** of the Variance Request is to allow for the alteration and enlargement of a preexisting nonconforming residence. The Planning and Permit Center recommends **APPROVAL** of the Special Use Request for a home occupation to allow for private piano lessons within her residence subject to conditions and modification

EXHIBITS:

1. Variance Application dated June 6, 2000
2. Site Plan
3. Floor plan of existing residence
4. Fish and Wildlife Site Assessment prepared by Graham-Bunting & Associates dated September 5, 2000.
5. Letter of Completeness dated July 19, 2000
6. Notice of Development dated July 27, 2000
7. PUD water bill
8. Skagit County Sewer District #2 bill
9. Assessor Map
10. Staff Photos
11. Correspondence Received
12. Special Use Application dated July 28, 2000
13. Environmental Checklist
14. Letter of Completeness dated August 28, 2000
15. Notice of Development dated August 31, 2000
16. Determination of Nonsignificance dated September 19, 2000

STAFF FINDINGS:

1. The subject property is zoned Residential and the Comprehensive Plan designates the area as Rural Village.
2. Per Section 14.01.033 of the Skagit County Code, a letter of completeness for the Variance Request was issued on July 19, 2000 and the Notice of Development Application was posted and published on July 27, 2000. The letter of completeness for the Special Use was issued on August 28, 2000 and the Notice Of Development was posted on the subject property and published in a newspaper of general circulation on August 31, 2000 as required by Section 14.01.040(2) of the Skagit County Code. The public hearing has been advertised in accordance with SCC Section 14.01.042.
3. The Special Use application has been reviewed in accordance with the State Environmental Policy Act guidelines (WAC 197-11 and RCW 43.21C). A Determination of Non-significance (MDNS) was issued on September 19, 2000, becoming effective following the fifteen-day comment period ending October 6, 2000 and fifteen-day appeal period ending October 23, 2000.
4. The subject property has been reviewed with respect to the Skagit County Critical Areas Ordinance Chapter 14.06 of the



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Skagit County Code. Based on the site plan provided and the staff field visit, the project is within 200 feet of Big Lake. A Fish & Wildlife Site Assessment as described in SCC 14.06.520 is required. A Fish & Wildlife Site Assessment dated September 5, 2000 prepared by Graham, Bunting & Associates was submitted. As a result of that assessment, a Protective Critical Area Site Plan will need to be recorded for the property. In addition, this area of Big Lake is in a DOE designated low flow region. The applicant has signed and recorded a low flow mitigation summary as required by the SCC 14.06.

5. The subject property is not located within a flood hazard area.
6. The subject property is not located in or adjacent to land designated as Natural Resource. The subject property is within the shoreline jurisdiction of Big Lake. Staff determined that the proposal did not require a shoreline permit. The existing residence is set back at a greater distance (93 feet) than the average for adjacent residences.
7. The subject parcel is approximately .39 acre and is separated by Westview Road. The property lies in an east/west configuration measuring 80 feet by 160 feet on the west side of Westview Road and 80 feet by 50 feet on the east side of Westview Road. The existing residence, built in the late 50's, is located at the east end of the western portion of the property. The applicant has lived in the house since 1972. The house currently consists of 2 bedrooms, kitchen, living/dining room, two (2) carports (360 sq. ft. and 460 sq. ft.). The existing house is approximately 4 feet from north (side) property line, approximately 16 feet from the east (front) property line, approximately 9 feet from the south (side) property line and approximately 93 feet from the Ordinary High Water Mark of Big Lake to the west. Public water and sewer serve the subject property. The property slopes gently from the east to the west. The lot is vegetated with a variety of ornamental plants, native vegetation, and several trees.
8. The applicant is proposing to remodel a portion of the existing house and add an addition on the lakeside. The proposed remodel/addition consists of walling in the carports to create a 360 sq. ft. garage and combining the other 460 sq. ft. carport with an additional 528 sq. ft. of new area to make 988 sq. ft. of living space. The applicant currently teaches private piano lessons in Burlington. If the Special Use Request is granted a portion of the new living area would be used for the private lessons. The proposed remodel/addition will not encroach into the setbacks anymore than the existing house does now.
9. Skagit County Code Section 14.04.090(5)(b)(i) Residential Setbacks are listed as Front: 35 feet, 25 feet on a minor



access road; Side 8 feet, Rear (for residences within shoreline jurisdiction) 50 feet from the OHWM or the average of homes on either side for 300 feet whichever is greater.

10. Skagit County Code Section 14.04.270(3) Enlargements, Alteration Reconstruction states that an existing legal building or structure that does not comply with zoning and building code requirements shall not be enlarged, altered, or extended. It has been a common practice of the Department to consider such structures for enlargement, alteration or extension through the Variance process. The request is then judged on its own merits.

11. Both applications were routed to the appropriate County Departments for review. Comments received were: **Public Works**—requested that the right-of-way and edge of the pavement be labeled and shown on the site plan. The applicant provided a revised site plan with the above items shown. **Septic/Water Review**—SCC 12.48.230-2 required proof of connection to a public water service. Public sewage connection needs to be verified by from the sewage provide. Staff notes the applicant provided proof of both services. A low flow mitigation form needed to be signed and recorded with the Auditor's office. As noted earlier, the applicant has done this. A water review fee has been paid.

12. Section 14.04.223(1)(e) Variances of the Skagit County Code states that certain items will be reviewed when approving or denying Variances. Those items 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. A site visit has confirmed the topography of the site.

The special circumstances in this situation is that the existing house was built prior to the adoption of any setback requirements. The location of the existing house does not allow for it to be enlarged or altered as the applicant proposes. The house has been well-maintained and is structurally sound. Although there is room on the property to move the structure to meet the front setback requirement, it would destroy the house.

- b. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly



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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. There are many other residences in the area that are as close or closer to both the road and the side yards. The proposed improvements will not make the dwelling any closer to the property lines.

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

The circumstances that require the request for a variance arise from the placement of the existing residence. The residence was built in the late 50's prior to setback requirements. The applicant purchased the property in 1972. The desire to remodel and enlarge the house is a result of 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.

Therefore, Staff concurs that the granting of this variance will not confer on the applicant any special privilege that is denied to other lands, structures, or buildings in the same district. The existing structure will be enhanced while adding additional living area to the south side of the dwelling.

13. The applicant is requesting a Special Use Permit for a home occupation to allow for private piano lessons within her residence. Lessons will be offered 4 days a week Monday thru Thursday with varying daytime hours. The applicant anticipates no more than 2 additional vehicles will be on site at one time, usually one student leaving as the other is arriving. The applicant feels there is enough room on her property to park 3 additional vehicles besides her own within the property lines.

14. Skagit County Code Section 14.04.030(40) defines Home Occupations-Special Uses as any business occupation or profession that meets the following criteria:

- (a) Is carried on by a member or members of a family residing in the dwelling and may include up to three (3) additional employees; There will be no other employees other than the applicant.
- (b) Is clearly incidental and secondary to the use of the property for dwelling purposes; This is the applicant's primary residence.



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- (c) The business activity may be conducted in other than the dwelling; The business activity will be in the primary structure.
- (d) Has no outside storage nor other exterior indication of the home occupation or variation from the residential character of the property with the exception of one sign not to exceed four (4) square feet; No outside storage or signage is proposed.
- (e) Does not create a level of electrical interference, line voltage fluctuation, noise, vibration, smoke, dust, odors, heat, glare, traffic and other environmental impacts beyond that which is common to a residential area. There will be a small amount of increased traffic to the site but nothing more than usual residential activity would create. There maybe some additional noise if the windows are left open. However, the adjoining properties are well buffered by trees on the subject property. Windows on the proposed addition will be located on the lakeside only.
- (f) Does not create a level of parking demand beyond that which is normal to a residential area. The applicant feels there is enough room to accommodate the parking demands of the students.

It should be noted that the intent of this category of special uses is to allow home based businesses to operate with the above noted limitations. When the business grows beyond the criteria established above and the conditions included in any approval, the business shall relocate in a zoning classification that would permit the activity.

15. Section 14.04.150 Unclassified Special Uses of the Skagit County Code indicates that certain items will be reviewed when approving or denying Special Use Permits. Those items are as follows:

- A. Conformity to the Comprehensive Plan in respect to the compatibility with existing and future land use and circulation.

Chapter 12 Economic Development Element of the Comprehensive Plan Employment section provides goals, objectives and policies that support the proposed project. Goal A: Create and maintain diverse employment opportunities that meet the changing income needs of Skagit County residents. Objective 1 A-2-Encourage diverse job options and entrepreneurial opportunities for persons interested in full-time and part-time employment or desiring to own their own business. Policies 1.3-Home occupations that are consistent with the character of adjoining properties and neighborhood will be accommodated.



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B. The zoning of subject property and surrounding properties and the conformance of the application with the Zoning Ordinance.

The subject property is zoned Residential. Skagit County Code 14.04.150 (2) states unclassified special uses considered under this section are those uses listed and other uses determined by the Administrative official to be similar. Section 14.04.150 (2)(g) Multi-family, Residential & Residential Reserve Districts list Home Occupations as a Special Use to be heard by the Hearing Examiner. The application is then reviewed on its merits.

C. Automobile or truck traffic and parking and its effect on surrounding community.

The proposed project will generate traffic that is typical of a single-family residence and should have little effect on the surrounding community. The property is served by South Westview Road, which is a deadend road about $\frac{3}{4}$ mile long. The applicant anticipates no more than 1 to 2 additional cars coming to the site at one time. There is adequate area for parking.

D. Noise, odors, heat, vibration, air and water pollution potential of the proposed use.

There will be no noise, odors, heat, vibration, air and water pollution potential of the proposed project provided the site is maintained in a typical residential manner. Any noise generated by the piano lessons will be towards the lake.

E. Intrusion of privacy.

The project appears to have minimal chance of intrusion of privacy onto the adjacent properties. The subject property is fenced on both sides. The students will be limited to the studio or deck area while waiting for their lessons. Parents and siblings will have a seating area inside the studio.

F. Design of site and structures as to possible effects on the neighborhood. (See comments below)

G. In addition to possible effects on the neighborhood in which the use is to be located, the potential effects on the region shall be considered.

There should be minimal effect on the neighborhood or region as a result of the design of the proposal. The residence has been in existence since the late 50's and the remodel/additions will only enhance an already well maintained structure.



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H. Potential effects regarding the general public health, safety, and general welfare.

The potential effects of the proposed project regarding the general public health, safety, and general welfare should be minimal as long as the property is maintained in a typical residential manner.

RECOMMENDATION

The Planning and Permit Center recommends **approval** of the Variance Request to allow for the alteration and enlargement of a preexisting nonconforming residence and of the Special Use Permit for a home occupation to allow for private piano lessons within her residence.

1. The applicant shall obtain all necessary approvals (i.e. building permit).
2. All vehicles shall be required to park on the subject property and not within the right-of-way of South Westview Road.
3. Prior to issuance of any building permit, a Protective Critical Area Site Plan will need to be recorded for the property and returned to the Planning and Permit Center.
4. The Special Use Permit shall be void if not started within one year of the date of this order.

Prepared by: MS

Approved by:



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