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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: ORDER ON VARIANCE REQUEST VA 01 0229

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: PACIFIC NORTHWEST TITLE INSURANCE CO.
(attn: Jim Berlien)

ASSESSOR PARCEL NO: P62022, P112522

ABBREVIATED LEGAL DESCRIPTION: The subject property is located at 18148 West Big Lake Blvd., Mount Vernon, WA; Tracts 38 and 39, Big Lake Waterfront Tracts; within Section 1, Township 33 North, Range 4 East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
PACIFIC NORTHWEST TITLE)	VA01-0229
INSURANCE CO.)	
)	
For a Variance to Allow a Mobile Home)	FINDINGS OF FACT,
to Encroach Upon Required Setbacks,)	CONCLUSIONS OF LAW,
On Property at 18148 West Big Lake)	AND DECISION
Boulevard.)	
)	

THIS MATTER, an application for a setback variance, came on regularly for hearing on July 11, 2001, upon due notice. Brandon Black appeared for the Planning and Permit Center. Jim Berlien represented the applicant Pacific Northwest Title Insurance Company. Members of the public were given an opportunity to be heard.

Based on the testimony taken, the exhibits entered and the argument made, the following is entered:

FINDINGS OF FACT

1. This application involves a request for a setback variance in relation to an existing mobile home located at 18148 West Big Lake Boulevard. The property occupies portions of Tracts 38 and 39 of the plat of Big Lake Waterfront Tracts (Tax Parcel #3862-000-039-0105). The property is within the Rural Village of Big Lake.
2. At present the deck of the mobile home encroaches into the right-of-way of the County road (Big Lake Boulevard). The home itself is up against the front property line at one point. The applicant proposes to remove the deck from the front of the home, relocating it to the north side. Otherwise he wishes for the house to remain where it is.
3. The front setback in the district is 35 feet, pursuant to SCC 14.16.310(5). The request then is for a variance that eliminates this setback altogether.
4. This application is substantially the same as a prior variance application made by the Title Company on behalf of Mr. Mack Peterson (PL00-0193). The present request is made by the Title Company on its own behalf.
5. The Company apparently takes the position that the prior application was never finally decided, because Mr. Peterson announced during an appeal to the County Commissioners that he was no longer interested in keeping the property. Thereafter, the Company purchased the property from Mr. Peterson.



6. In fact, the Hearing Examiner denied the prior variance request in a decision dated November 7, 2000. On appeal, the Commissioners upheld that decision on the merits. See Resolution No. 18140, December 26, 2000.

7. The Examiner has been presented with no new physical facts in connection with this second application. By this reference he incorporates the findings from the decision of November 7, 2000 herein and readopts the same. The prior decision is attached hereto and made a part hereof.

8. The Examiner notes that even if a setback variance for the house were approved, it appears that further variances would be needed in order for the driveway to comply with critical areas requirements.

9. The Company has provided a new argument for approving the variance this time around. They say that denial would impose a hardship, forcing them to remove the home at considerable expense. They also state that denial would reduce the value of the lot to practically nothing. It is argued, that allowing the home to stay would not be contrary to the public interest because today the mobile home and lot are generating tax revenues for the County. If the variance application fails, the applicant contends that the County would have a parcel on the tax rolls that has no market value and would never be used for any purpose.

10. No evidentiary record was made establishing that no other use can be made of the property.

11. 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 14.10.020(3).

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

3. In the absence of new facts, the Examiner can find no basis for departing from his prior analysis and conclusions. Moreover, he believes he is bound by the Commissioner's affirmance thereof.

4. Accordingly, he concludes that the approval of a reduction of setback to the extent sought would constitute a grant of special privilege that is denied to other lands, structures or buildings in the same district. SCC 14.10.030(2). The precedent set would be detrimental to the public interest. SCC 14.10.040(1)(c).



5. The expense involved in removing the non-complying mobile home is not the sort of hardship that would justify a variance. Variances are to provide relief from restrictions on development imposed by topography or pre-existing lawful conditions. The costs of correcting an unlawful condition do not fall within this rationale.

6. The tax consequences of removing the home also are not relevant to whether a variance should be granted. If the issue were whether the County might make more revenue by disregarding the dimensional requirements of its land use Code, the situations for allowing variances would increase exponentially.

7. The Examiner therefore concludes that the requirements for approval of a variance have not been met by this application.

DECISION

The variance is denied.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: July 30, 2001

Copy Transmitted to Applicant: July 30, 2001

Attachment: Mack Peterson decision dated November 7, 2000

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 dates after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.



SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
PACIFIC NORTHWEST TITLE)	VA 00-0193
(MACK PETERSON))	
)	FINDINGS OF FACT,
For a Variance to Allow a Mobile Home)	CONCLUSIONS OF LAW,
To Encroach Upon Required Setbacks,)	AND DECISION
On Property at 18148 West Big Lake)	
Boulevard.)	
_____)	

THIS MATTER, an application for a setback variance, came on regularly for hearing on September 27, 2000, upon due notice. Grace Roeder appeared for the Planning and Permit Center. Pat Sneeringer, Attorney at Law, represented Mack Peterson. Bill Ronhaar represented Pacific Northwest Title. Members of the public were given an opportunity to be heard.

Based on the testimony taken, the exhibits entered and the argument made, the following is entered.

FINDINGS OF FACT

1. Mack Peterson is the purchaser of property located at 18148 West Big Lake Boulevard. The property occupies portions Tracts 38 & 39 of the plat of Big Lake Waterfront Tracts (Tax Parcel #3862-000-039-0105). The property is within the Rural Village of Big Lake.
2. Mr. Peterson acquired title to the property on February 26, 1999. When he purchased, a mobile home was already in place on the lot. A subsequent survey shows that the deck of this mobile home extends into the right-of-way of Big Lake Boulevard and that the home itself is up against the front property line at one point.
3. Prior to Peterson's purchase, a driveway was built to the mobile home without benefit of a fill and grade permit. After Peterson took possession, the driveway began to give way and Peterson began to repair it. He was then advised by the County that a fill and grade permit was needed for the work.
4. As a result of research for the fill and grade application, the County and Mr. Peterson became aware of the true location of the deck and mobile home in relation to the front property line.



5. The instant variance application was filed by Pacific Northwest Title Insurance Company on March 30, 2000. The application was determined to be complete on May 8, 2000. The request contemplates removing the deck and leaving the mobile home where it is. Without the deck, the mobile home, as placed, will not intrude into the-right-of-way. It will, however, remain substantially within the 35-foot front yard setback.

6. A large steep canyon traverses the property and the only area where it is possible to locate a dwelling is between the road and the canyon. The mobile home is located in this area. Its location is on a flat spot elevated above the road. The driveway up to it is built largely on fill and close to the canyon.

7. The building permit for placement of the mobile home was issued to a predecessor of Peterson's before the adoption of the Critical Areas Ordinance (CAO). Thus, the existing location of the unit is not subject to review for impact to critical areas. A grade and fill permit however will require such review for the driveway.

8. If the mobile home were moved on the lot, compliance with the CAO would be needed. The steep slope of the canyon would require a 30 to 50 foot setback from the top of the bank. The rear of the mobile home is presently within 25 feet of the edge of the canyon. Moving the home to a locale where setback compliance is obtained therefore appears unachievable. If the critical areas setback were applied it is possible that no building envelope at all would exist on the lot.

9. The relevant history here can be summarized as follows. The lot was properly created from platted property via a boundary line adjustment. The mobile home was placed on the lot pursuant to a County-issued building permit. This building permit was issued in ignorance of the true location of the edge of the right-of-way. At the time of Peterson's purchase, the property and mobile home were represented to be in compliance with all County regulations. Mr. Peterson bought title insurance. He neither knew nor had reason to know of any setback or encroachment problem when he bought the property. The true location of the edge of the right-of-way only became apparent after a survey conducted subsequent to Mr. Peterson's purchase.

10. 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.

11. Special circumstances are present here in the topography and the size and configuration of the lot. The physical realities and the current mobile home placement are not the result of actions of the present owner. He is, indeed, a classic example of an innocent purchaser. The hardship involved is very real.

12. There are, however, countervailing considerations for preserving the integrity of the zoning code. The departure from the norm sought is substantial. It would place the house next to the right-of-way in a topographic situation that might render its position precarious if the road were ever expanded. There is no indication in the record that such significant variations from the standard setback are common in the area.

13. The attempt of the application is to remedy an unlawful situation by approval after-the fact. For purposes of land use evaluation, the situation must be viewed as though there were no house currently located on the property. Looking at the application in this light, the Examiner is convinced that the granting of the variance would not be in harmony with the general purpose and intent of the zoning code. The lot involved is simply not suitable for residential development.

14. 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 of 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 Sec 14.04.223(1)(f)(iv). The precedent set would be contrary to the public interest.

4. The Examiner therefore concludes that the requirements for approval of a variance have not been met by this application.

DECISION

The requested variance is denied.

Wick Dufford, Hearing Examiner

Date of Action: November 7, 2000

Copy transmitted to Applicant: November 7, 2000

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.

