



200110250143
Skagit County Auditor

10/25/2001 Page 1 of 6 1:49:12PM

AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON VARIANCE VA 01 0469

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: RICK MUMFORD

ASSESSOR PARCEL NO: P103826

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located at 8809 Birch Lane, Sedro-Woolley, WA; within a portion of the SW 1/4 of the SW 1/4 of Section 13, Township 35 North, Range 4 East, W.M. Skagit County, Washington.

UNOFFICIAL DOCUMENT

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
RICK MUMFORD)	VA01-0469
)	
For a Variance from Sewer Requirements)	FINDINGS OF FACT,
For a Proposed Four-Lot Short Plat)	CONCLUSIONS OF LAW
Within the Urban Growth Area for the)	AND DECISION
City of Sedro Woolley)	
_____)	

THIS MATTER, an application for a variance, came on regularly for hearing on September 26, 2001, after due notice. Grace Roeder, Planner, represented the County Planning and Permit Center. Jeroldine Hallberg, appeared for the City of Sedro Woolley. Marianne Manville-Ailles, of Skagit Surveyors represented the applicant. Members of the public were given an opportunity to be heard.

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

FINDINGS OF FACT

1. Rick Mumford (applicant) seeks a variance from sewer connection requirements of the Sedro Woolley Municipal Code (SWMC) in order to pursue a four-lot short plat within the urban growth area for the City of Sedro Woolley.
2. Development of land in Skagit County that is located within an urban growth area is governed by the County-adopted provisions of the applicable City code.
3. The applicant wishes to short plat property located at 8809 Birch Lane, situated within a portion of the SW1/4SW1/4, Sec. 3, T35N, R4E, WM.
4. The subject property is approximately 2.13 acres in size. The applicant is proposing to divide this acreage into four lots using on-site septic systems. The applicant has done a previous short plat in the area (of which the subject property is a part) and is now seeking to continue the process. Proposed lots 5 and 6 are 18,608 square feet each. Proposed lots 7 and 8 are 17,281 square feet each. A 50-foot-wide road is proposed to serve the lots.
5. SWMC 16.16.070(C) requires plats to be served by sanitary sewers unless a variance is granted. The applicant here seeks to be excused from compliance with the above requirement prior to short plat filing. He asks for a variance to allow the proposed on-site sewage systems.

6. The subject property is located on the east side of Birch Lane. It has an irregular shape, lying generally in a north-south configuration. The property is flat and currently vacant. The adjoining properties are developed with single-family residences.

7. The property is over 2,000 feet from the nearest public sewer line. In order to connect to it, a service line and a lift station would be needed. For a four-lot short plat, the cost of such an extension would be prohibitive.

8. Sedro Woolley Ordinance 1333-99 allows short plats to be served by on-site sewage disposal systems if a future development plan is approved. The applicant has filed a shadow plat showing a conceptual future division of this property into lots that comply with the minimum overall density of four units per acre.

9. The Sedro Woolley variance criteria are found at SWMC 17.60.050, as follows:

- a. It will not result in a detriment to neighbors or the public in general.
- b. Special circumstances exist here which are not common to other similarly restricted properties, such as physical features, nature of surrounding improvements and uses, or proposed design elements that will meet the same purpose as the regulation from which relief is requested.
- c. The cumulative effect of such variances will not undermine the purpose and intent of the regulation.
- d. The proposal supports the goals and objectives of the Comprehensive Plan.

10. The City Staff has reviewed the instant application and recommends approval, subject to a no-protest agreement for a sewer ULID and a no-protest agreement regarding annexation.

11. The Examiner finds that the short plat proposed contemplates development consistent with the surrounding neighborhood. But, special circumstances exist here in the distance and difficulty involved for effecting a hook-up to the sanitary sewer. These circumstances support deferring compliance with the sewer connection requirement in exchange for a promise not to oppose the eventual extension of services by means of a utility local improvement district.

12. There is a possibility that multiple variances of the type sought here might ultimately make it more difficult to obtain support for the extension of sewer services because of the duplicate costs of installing septic systems and then extending and



connecting to the sanitary sewer. The waiver of protest mechanism, counteracts this possibility, and thereby avoids the likelihood of adverse cumulative effects from the sewer variance.

13. The Comprehensive Plan and the zoning contemplate residential development in this area. The subdivision proposal, with its shadow plat, support the density goals of the Comprehensive Plan. The granting of the variance sought, with its no protest of ULID condition, will in not interfere with this result.

14. For the applicant, it is asserted that the sewer infrastructure concern can be addressed without reference to annexation, and that the variance need not be made conditional on the signing of a no-protest agreement on annexation. Alternatively, the argument is made that the applicant should be required to do no more than agree to sign an annexation petition, but that he should be free to oppose the terms of any annexation agreement.

15. The Examiner left the record open to the give the applicant and the City additional time to come up with new language or approaches to the annexation issue. On October 2, 2001, the applicant's representative submitted a letter addressing this subject. The City's submission was received on October 8, 2001. These items were included in the record, which was then closed. There was no meeting of the minds.

16. The City's letter drew attention to SWMC 15.56.080 which deals with development in unincorporated urban growth areas. That section states, in pertinent part:

If development is within the unincorporated portion of the city's urban growth area, the applicant shall enter into a contractual agreement with the jurisdiction with standing with the following conditions:

A. The property owner shall, at such time as may be directed by the city, sign, give consent, and not object to annexation of the development, provided the requirements of Chapter 35A.14 RCW are complied with in any further annexation proceeding. . . .

This language was also adopted by Skagit County Ordinance 18223.

17. Four comment letters on this application were received from neighbors. Two were concerned about their eventual costs for hooking up to the sewer system, noting that their existing septic systems are working fine. The other two asked that any approval of the applicant's variance be conditioned on no-protest of future annexation and an agreement to participate in any future LID for extension of sewer lines north of applicant's property



18. Soil samples need to be taken demonstrating that the subject property is suitable for septic development.

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 persons and the subject matter of this proceeding. SCC 14.10.020(3).

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

3. SCC 14.02.040 requires that in Growth Management Act designated urban growth areas, the provisions of the applicable City code shall be applied when adopted by County ordinance. Appendix A, thereto, lists Titles 15, 16, and 17 of the Sedro Woolley Municipal Code as among those City code provisions so adopted.

4. The Examiner concludes that the proposed short plat is "development" for the purposes of SWMC 15.56.080 and that it is appropriate under that section for a no protest of annexation agreement to be required as a condition of the subject variance. The language of the condition should track the language of the ordinance.

5. The above findings support a conclusion that the requested variance is consistent with the variance criteria of SWMC 17.60.050, if the following conditions are imposed:

a. The variance number and date of approval shall be placed on the final plat map.

b. Prior to approval of the short plat, the applicant must demonstrate to the County's satisfaction that adequate soils exist on the property to support on-site septic systems.

c. Prior to recording of the short plat, the applicant shall sign and record a waiver of protest for a sewer ULID relating to the extension of facilities to the subject property. The waiver shall contain a commitment by the applicant to participate in sanitary sewer system improvements on an equitable basis with other affected property owners.



d. Prior to recording of the short plat, the applicant shall sign, give consent, and not object to annexation of the subject property, provided the requirements of Chapter 35A.14 RCW are complied with in any further annexation proceeding. This contractual agreement shall likewise be recorded.

e. All outstanding planning review fees shall be paid prior to any final approval of any land division.

6. Expressions of opposition to the potential eventual necessity to connect to the sanitary sewer are quarrels with underlying legislation and need to be addressed to legislative authorities.

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

DECISION

The requested variance for septic system development in connection with the proposed short plat is granted, subject to the conditions set forth in Conclusion 5 above. This variance is temporary in nature. This decision contemplates the eventual compliance by the owner(s) of the subject property with the urban infrastructure requirements of the Sedro Woolley Municipal Code.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: October 25, 2001.

Copy Transmitted to Applicant: October 25, 2001

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days 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.



200110250143
Skagit County Auditor