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Skagit County Auditor

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1 of

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DOCUMENT TITLE: ORDER ON VARIANCE REQUEST VA 03 0490

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: GUNTHER THOMAS and TASSO SCHIELKE

ASSESSOR PARCEL NO: P#46396

LEGAL DESCRIPTION: The proposed project is located on the N.E. corner of Sinclair Island, known as Lot 6, Anacortes, WA; a portion of Section 10, Township 36 North, Range 1 East, W.M., Situate within Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Gunther Thomas
Tasso Schielke
AM Ufercastell 27
Haltern, Germany 45721

Agent: Curt Omev
Sinclair Island, WA

File No: PL03-0490

Request: Variance

Location: North of Jackson road on the northeast shore of Sinclair Island,
on a 20+ acre tract identified as Lot 6, within a portion of Sec 10,
T36N, R1E, W.M.

Land Use Designation: Rural Reserve

Summary of Proposal: To maintain an existing cabin without a sprinkler system.

Public Hearing: After reviewing the report of the Planning and Permit Center,
the Hearing Examiner conducted a public hearing on
December 17, 2003.

Decision: The application is approved, subject to conditions.



FINDINGS OF FACT

1. Gunther Thomas and Tasso Schielke (applicants) are the owners of a small cabin on the northeast shore of Sinclair Island, adjacent to the Bellingham Channel.

2. Sinclair Island is lightly developed. On the north end there is a scattering of recreational cabins. There is no generally available source of electricity on the island. There is no fire district.

3. Thomas and Schielke apparently have sought a building permit to legitimize the existence of their cabin (BP00-1452). As a part of the process they seek a variance from SCC 14.16.850(6)(b)(iii)(e). Subsection (b)(iii) overall deals with exceptions to the general rule that building permits are not issued for structures that are outside of a County fire district. The provision reads as follows:

(iii) Outside of a fire district, a single-family dwelling or accessory building permit may be applied for if it meets all of the following or comparable alternative fire protection requirements as determined by the Fire Marshal:

(a) The lot was a legal lot of record prior to the adoption of interim controls on June 11, 1990.

(b) Approved noncombustible roofing materials must be used.

(c) Slash abatement within 200 feet of any portion of the exterior of the structure.

(d) A safety zone cleared of flammable vegetation 30 feet from any portion of the exterior of the structure on level ground and 100 feet downhill on sloped ground.

(e) Building sprinklers installed per National Fire Protection Association 13D (NFPA 13D).

(f) Exception: Buildings of 800 square feet or less, which are:

[1] Unheated separate accessory structures to a full-time dwelling unit 20 feet from all other buildings; or

[2] A building used as a vacation cabin and not as a full-time residence.

(g) There is availability of 300 gallons of water on-site, 400 feet of 1-inch fire hose with foam applicator, and an internal combustion engine powered pump.

4. The subject building is used seasonally as a vacation cabin and not as a permanent residence. It is located on a 20+ acre lot that is situated within a portion of Sec 10, T36N, R1E,



W.M. The property is shown on the Assessor's Map of Section 10 as Lot 6 (P46396). It has been a legal lot of record since prior to June 11, 1990.

5. In the written record, the dimensions of the subject cabin are not explicitly provided. However, it appears to be less than 800 square feet. The Critical Areas checklist submitted with the building permit application says that the impervious surface covered is only 550 square feet.

6. The cabin sits on level ground. It has a metal roof. Slash has been removed from the area within 200 feet of the cabin. There is no flammable vegetation within 50 feet of any portion of the exterior structure.

7. A pond is available for fire suppression and a pump capable of supplying 8,400 gallons per hour is installed seasonally. The pump is powered by an internal combustion engine. A two-inch line is plumbed to within approximately 20 feet of the northwest corner of the cabin where two garden hoses are kept.

8. There is also a water tower located along the southeast property line, approximately 220 feet from the cabin. The property contains a private well which, though low in yield, does provide storage water. The cabin is served by an on-site septic system.

9. The well does not have elevated chloride counts. It is located some 350 feet from the top of the shoreline bank and almost 400 feet from the line of ordinary high water. Because of its depth, distance from salt water and low yield, it is highly unlikely that seawater intrusion will ever occur there.

10. The parcel was reviewed with respect to the Critical Areas Ordinance. As a result, a fish and wildlife site assessment was submitted in connection with the building permit application. The report was approved, subject to recording a Protected Critical Areas (PCA) with the County Auditor's office. A Critical Area Site Plan was prepared and the PCA was recorded.

11. Of the consulted agencies, only two had comments: Environmental Health Unit and Fire Marshal's office.

12. The Fire Marshal's office did not specify any alternative fire protection requirements. The Fire Marshal had the following comments:

(a) The ordinance that required sprinklering dwellings built outside of a fire district was implemented to help protect the resource lands, specifically the industrial forest resource, from the fire dangers associated with development in what is referred to as the urban/wild land interface.

(b) According to the county zoning map Sinclair Island has no land designated as resource.



(c) It is not possible on an island with almost no permanent residents to form a fire district, annex into a fire district or contract for services with an existing fire district.

(d) It is extremely difficult to provide a sprinkler system on an island with no electrical power. Also when buildings are not occupied and heated it is difficult to provide freeze protection to the sprinkler system.

(e) With almost no one on the island from October through April and no way to monitor the system, maintenance is also a problem.

If this property were on the mainland or on an island with forest resource zoning, I would strongly recommend denial of this variance despite the difficulties associated with items c, d, and e. However, since there are no lands identified as resource on Sinclair Island and considering the difficulties with sprinklering, the Fire Marshal's Office will not raise any objections to the requested variance PL03-0490.

13. The Environmental Health Unit (Water Resources) stated that it has no objection to final approval "when the water file WA01-0032 is completed." The file is lacking the requirements of the Salt Water Intrusion (SWI) Policy. Water Resources stated, "If the owners/applicants do not want to follow the SWI Policy, a variance is required. If a variance is requested, then a status report for the SWI Policy is required."

14. The variance criteria of the Unified Development Code are set forth in SCC 14.10.030(2). The application must contain a narrative showing conformity to the following:

(a) 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. Topics to be addressed include topographic or critical area constraints that make use of the particular site infeasible without the proposed variance.

(b) 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 SCC Titles 14 and 15.

(c) 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 SCC Titles 14 and 15 to other lands, structures or buildings in the same district.

(e) An explanation of how the requested variance meets any other specific criteria required for the type of variance requested, where applicable, including, but not



limited, to the following:

- (i) Explanation of compliance with the criteria a for a Critical Areas Ordinance variance under SCC 14.24.140.
 - (ii) Explanation of compliance with the criteria for a shoreline variance under the Skagit County Shoreline Management Master Program.
 - (iii) Explanation of compliance with the criteria for a public works alternative under Skagit County Public Works Standards adopted pursuant to Chapter 14.36 SCC.
 - (iv) Explanation of compliance with the criteria for variance from the agricultural siting criteria found in SCC 14.16.400(6).
 - (v) Explanation of compliance with the criteria for Flood Hazard Ordinance variance found in SCC 14.34.130.
- (f) If applicable, an explanation from the Applicant as to why, if a variance is denied, the Applicant would be denied all reasonable use of his or her property.

15. The Staff Report analyzes the application in light of the above standards and finds that, as conditioned, it is consistent with them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

16. The applicants comply with all criteria for an exception to the prohibition on building permits for structures outside of fire districts, other than the requirement for a sprinkler system. The reasons set forth in the application justify granted a variance from the sprinkler system requirement.

17. A variance from the sprinkler system requirement was recently granted to another landowner on the island.

18. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code, and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.

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 14.06.050(b).



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

3. The structure in question, as a small vacation cabin under 800 square feet in size, appears to meet the conditions of SCC 14.16.850(6)(b)(iii)(f). Arguably, this means that a building permit could be issued without the need for a variance from the sprinklering requirement.

4. Nonetheless the variance has been sought, and the application is consistent with the variance criteria of SCC 14.10.030(2), if conditioned as set forth below.

5. The following conditions should be imposed:

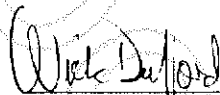
(1) The applicants shall comply with all requirements of any building permit obtained.

(2) The issuance of this variance is not contingent on receiving any other approval. Nevertheless, the applicants are directed to confer with the Environmental Health Unit (re: File #WA01-0032) concerning compliance with the Salt Water Intrusion Policy or whether they wish to seek a variance from the SWI Policy.

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

DECISION

The requested variance is approved, subject to the conditions set forth in Conclusion 5 above.



Wick Dufford, Hearing Examiner

Date of Action: January 13, 2004.

Copy Transmitted to Applicant: January 13, 2004.

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.

