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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 SPECIAL USE PERMIT SU 03 0890

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: ELISABETH BART

ASSESSOR PARCEL NO: P111904

LEGAL DESCRIPTION: The project is located at 5207 Filbert Lane Bow, WA; Lot 15B of Short Plat 60-88; within the NE1/4 of the NW1/4 of Section 35, Township 36 North, Range 02 East, W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Elisabeth Bart
5207 Filbert Lane
Box, WA 98232

File No: PL03-0890

Request: Special Use Permit (Home Based Business)

Location: 5207 Filbert Lane on Samish Island; Lot 15B, Short Plat 60-88;
within a portion of NE1/4NW1/4 Sec. 35, T36N, R2E, W.M.

Land Use Designation: Rural Intermediate

Summary of Proposal: To operate a home based business providing aquatic therapy and limited instruction services. The business, called "Soothing Waters" offers Watsu, a form of aquatic bodywork conducted in 96 degree water. The sessions are conducted in a small pool behind the residence. Wellness or yoga sessions may also be given upstairs in the home.

Public Hearing: After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on May 12, 2004.

Decision: The application is approved, subject to conditions.



FINDINGS OF FACT

1. Elisabeth Bart (applicant) seeks a permit to conduct a home based business at her home at 5207 Filbert Lane on Samish Island.
2. The property is Lot 15B of Short Plat 60-88, located within a portion of the NE1/4 NW1/4 Sec. 35, T36N, R2E, W.M. The Comprehensive Plan and Zoning designations are Rural Intermediate.
3. The business is called "Soothing Waters," and involves aquatic therapy and limited instruction services. Watsu, a form of aquatic bodywork conducted in 96-degree water is the primary focus of the operation. A small pool located behind the house is the site for the in-water sessions. The applicant is also considering providing occasional wellness or yoga sessions that would meet upstairs in the home.
4. The subject property is approximately two acres in size and basically flat in topography. It is located on the east side of Filbert Lane. The lot is rectangular with the long dimension running east-west. There are a single-family residence, attached guesthouse, and a small storage building located in the eastern (back) portion of the property. The front 2/3 of the lot is a filbert tree orchard. A 12 foot gravel driveway extends from Filbert Lane through the middle of the property. The applicant resides in the house.
5. Five parking spaces are available for clients. Three spaces are on the concrete apron leading to the garage and two additional spaces are available in the pullout off of the circular drive in front of the guesthouse.
6. The pool is shielded from neighboring properties by the house, garage, vegetation and open space. It is a portable 16-foot around and four-foot deep above-ground pool sitting on a 33-foot by 20-foot concrete slab.
7. Filbert Lane is a seven-residence cul-de-sac accessed from Samish Island Road. The surrounding properties to the north, south, and west are all similar in size and developed with single-family residences. The property to the east is a vacant parcel owned by the Samish Island Homeowners Association.
8. This request is for an after-the-fact permit. The applicant has been running the aquatic therapy operation since 1999 unaware of the need for a Special Use Permit. The business has been run on a seasonal basis from April to October with sessions occupying only about eight hours a week. Sessions have been offered 2-3 days consecutively in the middle of the week from 9:30 a.m. to 7:30 p.m. with occasional weekend sessions.



9. A typical Watsu session lasts one and a half hours and is conducted on a one-to one basis with advance scheduling. In addition, the applicant offers one water exercise class, two aqua babies classes and a limited number of swim instruction classes.

10. Due to the small size of the pool, the classes are limited to 4-6 persons per class. Each class runs for a six to eight week session.

11. The applicant would like the option of operating the business year around, and to be able to offer sessions and classes during all weekdays, with a couple of weekend sessions per month. The requested hours of operation are 9:30 a.m. to 7:30 p.m. There is no intention of significantly increasing the actual level of operations. The applicant does not anticipate having any other employees.

12. The concerns of reviewing agencies were addressed in the permit process. There may be a need to address handicapped access in connection with building permit approvals. Environmental health questions about the disposal of pool overflow and filter backwash were satisfactorily answered. There have been no complaints about noise, but regulatory limits need to be observed.

13. There is no outside storage nor is there other visible exterior indication of the home occupation. The applicant said that she believes that her operation has generally been accepted in the neighborhood. A number of neighbors wrote and testified in support of the business, characterizing the operation as unobtrusive and the impact as minimal.

14. Two neighbors, however, did express concerns about the danger of the traffic generated. The Staff pointed out that Filbert Lane is a short side road on which it is difficult to generate great speed. Nevertheless, a small sign on the road with a warning message, such as "Go slow, children in area," was suggested as an added condition.

15. A number of letters and speakers strongly endorsed the programs offered. They were complimentary of the applicant's ability as a teacher and were appreciative of the healing value of the Watsu sessions. The applicant is the only certified Watsu practitioner in Skagit County.

16. On March 11, 2004, a Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued. The DNS was not appealed.

17. SCC 14.16.900(3)(e) establishes special approval criteria for home based businesses:

- (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 to and secondary to the use of the property for dwelling purposes;
- (c) The business activity may be conducted in other than the dwelling;



(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) feet square 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;

(g) May have clients come to the site.

18. SJCC 14.16.900(2)(b)(v) contains the criteria for approval of Special Use Permits generally. The criteria are:

(a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.

(b) The proposed use complies with the Skagit County Code.

(c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing or potential dwelling units, based on the performance standards of SCC 14.16.840.

(d) The proposed use will not generate intrusions on privacy of surrounding uses.

(e) Potential effects regarding the general public health, safety and general welfare.

(f) For special uses within . . . Natural Resource Lands, . . . the impact on long-term natural resource management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

19. The Staff Report analyzes the application in light of both the home based business criteria and the general criteria for special uses and find that, as conditioned, the proposal will be consistent with the criteria. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.



20. Based on the entire record, the Examiner concludes that the business has been and can be conducted in a way that is compatible with the residential setting and that the related increase in traffic is not sufficient to justify a rejection of the business.

21. 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.

2. The requirements of SEPA have been met.

3. SCC 14.16.300(4)(n) lists Homes Based Business 2 in the Rural Intermediate zone as a Hearing Examiner Special Use.

4. The proposal, as conditioned, meets the requirements for such a home based business and for the approval of a Special Use Permit. SCC 14.16.900(2)(b)(v), 14.16.900(3)(e)

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

6. The following conditions should be imposed:

(1) The applicant shall obtain all applicable permits, including any necessary building permits, and shall comply with the requirements thereof. Any facilities for handicapped access that are needed for any use shall be installed before the use is commenced.

(2) Hours of operation shall be limited to Monday through Friday, 9:30 a.m. to 7:30 p.m. Weekend sessions shall be limited to no more than two per month.

(3) Non-residential employees shall be limited to three (3).

(4) The described techniques for managing pool overflows and filter backwash shall be followed. The business shall otherwise be operated as described in the application materials.

(5) Relevant performance standards for noise, light and maintenance of water quality, as set forth in SCC 14.16.840, Chapter 173-60 WAC and Chapter 173-200 WAC shall be adhered to.

(6) One non-illuminated sign not to exceed four square feet in size shall be allowed to identify the business.



(7) A sign warning that children are present and asking for slow and cautious speed shall be erected on Filbert Lane.

(8) The applicant shall provide a designated waiting area for clients and other observers.

(9) The Special Use Permit shall be void if the use is not started within two years of the date of this decision and if abandoned for a period of one year.

(10) If the business grows beyond the limits of the Home Based Business 2 criteria and the conditions of approval herein, the business shall relocate to a zoning classification that permits the activity.

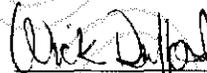
(11) The County Planning and Permit Center shall be notified within 30 days after any change in ownership of the parcel by submission of a letter to the Planning and Permit Center referencing the permit number (PL03-0890).

(12) Prior to the issuance of the permit, any outstanding planning review fees shall be paid in full.

(13) Failure to comply with any condition of approval may result in permit revocation.

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth in conclusion 6 above.



Wick Dufford, Hearing Examiner

Date of Action: June 8, 2004

Date Transmitted to Applicant: June 8, 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.

