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

DOCUMENT TITLE: RECOMMENDATION ON AGRICULTURAL VARIANCE AV 04 0531

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: TERRY and KIMBERLEY JOHNSON

ASSESSOR PARCEL NO: P48434

ABBREVIATED LEGAL DESCRIPTION: Located at 4913 Chuckanut Drive in Bow, within a portion of Section 27, Township 36 North, Range 3 East, W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER
FINDINGS, CONCLUSIONS AND RECOMMENDATION**

Applicant: Terry and Kimberley Johnson
P.O. Box 85
Bow, WA 98232

File No: PL04-0531

Request: Variance (Ag-NRL)

Location: 4913 Chuckanut Drive, within a portion of Sec. 27,
T36N, R3E, W.M.

Land Use Designation: Agricultural – Natural Resource Lands

Summary of Proposal: To place a new residence 850 feet from the front property
line Instead of within 200 feet thereof, as required by SCC
14.16.400(5)(a)(i)(A).

Public Hearing: After reviewing the report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on October 20, 2004.

Recommendation: The application should be approved, subject to conditions.



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FINDINGS OF FACT

1. Terry and Kimberley Johnson (applicants) seek a variance to place a new residence farther from the front line of their property than the maximum allowed by the zoning code. The property is zoned Agricultural-Natural Resource Lands (Ag-NRL).
2. SCC 14.16.400(5)(a)(i)(A) provides for the front setback on Ag-NRL property as follows:
 - (A) Front: 35 feet minimum, 200 feet maximum from public road. Maximum setback may be waived by the Planning and Permit Center where critical areas are located within 200 feet of the road, preventing the placement of a house within the setback area. The maximum setback may also be waived by the Planning and Permit Center in cases where nonfloodplain or nonprime agricultural land is located on the lot outside of the setback area, which would provide a more appropriate placement of a house.
3. The site is 4913 Chuckanut Drive, within a portion of Sec. 27, T36N, R3E, W.M. The property fronts on Chuckanut Drive on the west and has a rectangular shape. All of the other sides abut on Ag-NRL land.
4. The property comprises approximately 10.71 acres. It is relatively narrow (361 feet) and deep (1,290 feet). The parcel has been actively farmed in conjunction with neighboring land. The abutting properties are being used for agriculture.
5. The parcel is substandard in size. The Ag-NRL zone has a minimum lot size of 40 acres. The applicants intend to use the land for pasturing horses.
6. Wetlands exist on the site. Wetland A is a depressional swale of approximately 4,595 square feet along the northwestern property line. This swale runs along the historic agricultural access to the interior. Because of its small size and low category it is not regulated by the Critical Areas Ordinance. Wetland B comprises approximately 16,928 square feet near the south central boundary and is ranked as Category III (50-foot buffer). Wetland C, about 10,800 square feet, is situated near the center of the site and ranked as Category IV (25-foot buffer). There is also a ditch that qualifies as a Type 4 water (50-foot buffer). It runs from Wetland B west to Chuckanut Drive. Notwithstanding these features, the Planning and Permit Center concluded that the critical areas located within 200 feet of the road do not prevent the placement of a home there.



7. The Staff also decided that there are no nonfloodplain or nonprime agricultural lands outside of the setback area. Therefore, they declined to issue a waiver of the maximum setback. This required the applicant to turn to the formal variance procedure.

8. The variance request is to construct a residence about 850 feet from Chuckanut Drive and approximately in the center of the parcel north to south. There is a previously-constructed driveway along the north property line, leading from the road to a partially constructed agricultural building (BP04-0745). The residence would be placed in proximity to this building and would use the existing driveway for access.

9. Variance criteria are set forth at SCC 14.10.030, as follows:

(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 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) [The proposal meets special criteria for the type of variance requested, *i.e.*, critical areas variance, shorelines variance, public works alternative, agricultural siting variance, flood hazard variance].

(f) If applicable, the applicant must explain why, if a variance is denied, the Applicant would be denied all reasonable use of his or her property.

10. The agricultural siting criteria are also applicable here. As set forth in SCC 14.16.400(6), these are:

(a) Siting of all structures in the Agricultural—Natural Resource Lands district shall minimize potential impacts on agricultural activities.

(b) Structures shall be located at the edge of the property, either adjacent to the road or next to an interior lot line.



(c) When structures exist on adjacent properties, siting of new structures shall comply with the following prioritized techniques:

(i) Locate new structure(s) in the same ownership adjacent to an existing compatible structure(s) sharing a common access road.

(ii) When the provisions of Subsection (6)(c)(i) of this Section are not practical, locate adjacent to an existing structure.

(iii) When the provision of Subsection (6)(c)(i) or (6)(c)(ii) of this Section are not practical, site to achieve minimum distance between Structures.

11. The Staff Report says that the property does fluctuate slightly in elevation, but notes that the entire parcel lies within an A8 flood zone as an area of 100-year flooding (See Flood Insurance Rate Map panel #530151 0050C, January 3, 1985).

12. The Staff recommendation is for denial of the variance. They conclude that special conditions do not prevent building within the 200 foot limit and that the requirement for locating at the edge of the property is not met. The proposed homesite is approximately 140 feet from the north property line.

13. The applicants showed that Staff underestimated the fluctuations in elevation on the property. The increased height to the east, they argue, is significant enough to justify placing the house toward the back of the lot as they have requested. They note that the property drops off slightly behind Chuckanut Drive and that much of front portion (within 200 feet of the road) is covered with standing water during the winter (Nov. to April/May).

14. The applicants survey indicates that after the initial dropoff, the property slowly gains in elevation as you travel east. At 850 feet inland, the elevation is about a foot above the elevation at Chuckanut Drive and about 3.5 feet above the lowest area in the front portion of the lot. The eastern portion of the parcel is significantly drier throughout the year and does not have standing water during the winter months.

15. The applicants say that placing their home at the 850 foot site would accord with agricultural siting criteria by locating it near their agricultural building. They state that this location would also bring the home into close visual proximity with buildings on the property to the north.

16. They maintain that a new driveway and house pad would be needed for a residence within 200 feet of the road, necessitating the placement of 7,000 cubic feet gravel, covering 10,500 square feet of valuable farmland. The new driveway would be required in order to reach the highest portion of the area.



17. There appears to be no argument about the usual winter wetness of the front portion of the property. Neighbors as well as the applicant's wetland consultant support the idea of placing the house further back on the parcel due the rise on elevation. The wetlands on site will not be impacted by building at the 850-foot location.

18. The professional who evaluated the soils on site for septic system installation testified that he would recommend building toward the back of the lot because the soils are better there and the water table will not be quite so close to ground surface.

19. No adverse comments were received on this application from members of the public.

20. Some other landowners in the area have residential setbacks of about 600 feet with farmlands surrounding their homes. There are also a number of homes in the vicinity that are located within the required 200 foot maximum setback.

21. No matter where the house is built, it will need to be elevated at least a foot above the base flood elevation in order to meet flood damage prevention requirements. Location of the house at the 850 foot location would reduce the amount of elevating required.

22. The preponderance of evidence supports a finding that the small interior ridge where the applicants want to build is the most desirable location for a house on the property. Under the circumstances the Examiner finds that the elevation difference on this parcel is the kind of topographic special circumstance contemplated by the variance criteria. This is a physical condition that does not from the actions of the applicants.

23. The Examiner is persuaded that clustering the home and the approved agricultural building (under construction) will be less disruptive to the intended agricultural use of the property than requiring a separate fenced-off site toward the front of the lot for the home. The maximum use of the agricultural potential of property is what the maximum setback is about. Therefore allowing the setback proposed will allow the same rights to these applicants as are commonly enjoyed by other owners of similar property. Conversely, no grant of special privilege is involved.

24. Clearly, the placement of the house at 140 feet south of the north boundary, does not meet the agricultural siting criterion that calls for structures to be located at the edge of the property. Interestingly the site plan attached to the Wetland Site Assessment Addendum submitted this spring shows the proposed house behind the approved barn building and near the north boundary. A revision of the house location more in keeping with that site plan will be needed in order for the increased setback variance to be approved.

25. Otherwise, the agricultural siting criteria appear to be met by the proposal.



26. The reasons set forth in the application justify the granting of the variance, as conditioned. The variance is the minimum that needed for reasonable use of the land. The granting of the variance will be harmony with the general purpose and intent of the Unified Development Code and other applicable provisions of the County Code. Granting the variance will not be injurious to the neighborhood, or otherwise detrimental to public welfare.

27. 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. Under SCC 14.10.020(2), this application is to be processed as a Level III-Hearing Examiner recommendation with the final decision by the Board of County Commissioners.

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

3. There was no discussion by the applicant on why a variance is needed to prevent denial of "all reasonable use of the property." That variance criterion comes into play only "if applicable," which means in cases where there is some question that failure to grant the variance would result in a constitutional taking of the property. No such situation is presented here.

4. The findings support a conclusion that the project, as conditioned, will be consistent with the applicable variance criteria. SCC 14.10.030.

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

RECOMMENDATION

The variance should be approved, subject to the following conditions:

1. The applicants shall submit a revised site plan locating the house in a manner consistent with the requirements of SCC 14.16.400(6)(b).



2. The building permit applied for shall be based on the revised site plan.



Wick Dufford, Hearing Examiner

Date of Action: December 27, 2004



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